

# Appendix C

IN THE SUPERIOR COURT OF LOWNDES COUNTY, GEORGIA  
FILED IN OFFICE

STATE OF GEORGIA

2020 JUN 30 PM 2:52

STEVEN BRYANT, )  
GDC #0001045084 )  
Petitioner, )  
vs. )  
SHAWN EMMONS, WARDEN, )  
Respondent. )

*Beth C. Green*  
CLERK OF SUPERIOR STATE  
JUVENILE COURTS

CASE NO. 2019-CV-1187

HABEAS CORPUS

**FINAL ORDER**

Steven Bryant (the "Petitioner") filed this petition on June 18, 2019, challenging his August 25, 2015, Floyd County jury trial conviction for aggravated sexual battery and sentence of life in prison without the possibility of parole. A partial hearing was held on December 12, 2019, and a second evidentiary hearing was held on May 14, 2020. Having reviewed the transcript and evidence presented at both evidentiary hearings in this case, and based on the entire record herein, the Court makes the following findings of fact and conclusions of law:

**PROCEDURAL HISTORY AND**  
**FINDINGS OF FACT**

Petitioner was indicted on April 17, 2015 for aggravated sexual battery. After a two-day trial he was found guilty of aggravated sexual battery and was sentenced on August 25, 2015, to life in prison without parole under O.C.G.A. §17-10-7(c).

Trial counsel, Mr. James C. Wyatt, who also acted as first appellate counsel, filed a Motion for New Trial on general grounds on September 11, 2015. (HT 478). He amended the motion April 25, 2016. (Vol. 2, HT 293).

The Motion for New Trial was heard on April 26, 2016 and was denied on May 2, 2016. (Vol. 2, HT p.286). Trial Counsel filed the notice of appeal. (Vol. 11, HT p.284).

Mr. Wyatt is employed as a Public Defender conflict counsel for Floyd County. Petitioner was convicted of aggravated sexual battery based upon the act of inserting his fingers into the vagina of the alleged victim Shirley Hudgins. Ms. Hudgins died in an unrelated house fire approximately one month after the incident date. Evidence at trial included hearsay testimony from four witnesses.

At arraignment on May 1, 2015, Mr. Wyatt filed a Waiver of Arraignment and Request for Discovery, invoking the Discovery Act in O.C.G.A. §17-16-2(d), and making a statutory demand for reports and exculpatory material under Brady and evidence of an understanding, agreement, or promise of leniency as set forth in Giglio v. U.S. (cite omitted) and Patillo v. State, (cite omitted). (Vol. 2, HT 233).

Wyatt informed the trial court after the notice of appeal was filed and Bryant filing additional motions, that he was frustrated with the Public Defender's office over the need for new appellate counsel. The GPDSC office refused to appoint appellate counsel based on its view that Bryant had not clearly made ineffective assistance claims against Mr. Wyatt. (Habeas Hearing Transcript May 14, 2020, p.79-80).

The Trial Court declined to remove Wyatt as appellate counsel, and stated in its order that this obligation rests with the Public Defender Standards Council, and ordered on February 23, 2016, Mr. Wyatt to represent Bryant on appeal.

### **The Initial Investigation by Floyd Police Department**

During the preliminary hearing held by the Floyd County Magistrate Court, on March 26, 2015, Investigator Ginger Ramey, Floyd County Police Department, testified about her investigation.

Investigator Ramey made a recording of her interview with the victim, Ms. Hudgins. (Vol.7, HT p.983-984; Court exhibit 1, Preliminary Hearing transcript p.9).

Investigator Ramey stated, according to her investigation, that Ms. Hudgins was asleep on the couch, that she woke to heavy breathing, "At that time Mr. Bryant's head was there at her--at her head. She said that his hand was inside of her pants." After this time, Ms. Hudgins went to the bathroom, and "it was gooey". (HT p.978).

Investigator Ramey summarized the complaint from Ms. Hudgins a second time in her testimony, that Ms. Hudgins was asleep on a sofa, and she woke up with Bryant leaning over her, and "She indicated to me that she had been touched in her vaginal region." (Vol. 7, HT 980). She believed she had been touched by Bryant's finger. (HT 980).

Jason Kilgore, Ms. Hudgins' nephew, who was sleeping in the same living room as her, woke to Ms. Hudgins' screaming at Bryant, saw Bryant standing over her and move away quickly, and both were fully clothed. (HT 983).

One of the issues raised by Bryant is the lack of evidence for aggravated sexual battery concerning the penetration of the sex organ with object. Investigator Ramey's preliminary hearing testimony did not contain any statement from Ms. Hudgins or Jason Kilgore that Bryant had inserted his fingers in her vagina. (Court exhibit 1, preliminary hearing March 26, 2015, p.1-14; HT 975-988).

However, during the sexual assault examination conducted by Tina Gentry, on February 7, 2015, beginning at 10 p.m., Ms. Hudgins stated Bryant had inserted his fingers in her vagina. (Vol. 1, HT 128; petitioner's ex. 3).

#### **Mr. Wyatt's Investigation**

Mr. Wyatt was appointed to represent Bryant at approximately the date of arraignment, May 1, 2015.

Mr. Wyatt testified in the habeas proceeding on May 14, 2020. The initial complaint in the case came from a 911 call at approximately 4 p.m., the next day after the incident. In response to the call, Floyd Police Department Officer, Patrolman Poster responded and prepared an incident report after speaking with Ms. Hudgins. Mr. Wyatt read the report during his testimony, and it stated Bryant "had his fingers down there while Kimberly Bridges watched." He confirmed that report did not allege Bryant had inserted his fingers. (Vol. 1, HT 38).

Mr. Wyatt testified he was unaware of an audio recording of Ms. Hudgins interview with Investigator Ramey. He only had a written report from the Hudgins interview. (Habeas Hearing Transcript May 14, 2020; Vol. 1, 38).

Mr. Wyatt confirmed he never obtained the audio recording of Ms. Hudgins by Investigator Ramey. (Habeas Hearing Transcript May 14, 2020; Vol. 1, 39).

Mr. Wyatt confirmed he did not have the audio recording of Jason Kilgore. (Habeas Hearing Transcript May 14, 2020, Vol. 1, 39). According to Investigator Ramey's preliminary hearing testimony, her interview of Jason Kilgore, "it's all on the recording." (Court exhibit 1, Preliminary hearing March 26, 2015, p.9; HT 983).

The court requested of Mr. Wyatt to file the discovery material he possessed in his file with the habeas clerk in Lowndes County, and these records are found at C-4.

**Conflict of Bryant's trial counsel was known at the trial court level**

Bryant was convicted on August 25, 2015.

Mr. Wyatt remained as his appellate attorney including filing the brief on direct appeal to the Court of Appeals until he was replaced, after remand by that Court, by Mr. Haddad.

Bryant began raising his ineffective counsel claims in his numerous pro se filings in the Floyd Superior Court, in part as follows:

February 17, 2016, Motion to Dismiss Counsel and Appoint New Appointment of Counsel. (Vol. 3, HT 464, Respondent's exhibit 1(e) (raising 30 claims of ineffective assistance by trial counsel);

Feb. 29, 2016, Pro Se Motion to Dismiss Counsel and Appoint New Appellate Counsel on ineffective grounds. (Vol. 2, HT 300-309) (motions contain 25 subparts, raising conflict of interest, hearsay objection failure concerning text messages, failing to obtain DNA results, mislead plea offer, failing to impeach testifying co-defendant with probation plea deal);

February 29, 2016, Motion to Reduce, Modify Sentence. (Vol.3, HT 459-462) (raising several ineffective assistance of counsel claims).

July 12, 2016, Motion to Release Attorney James C. Wyatt and Replace him with Outside Attorney From Atlanta Georgia's Appellate Division. (Vol. 3, HT 505).

January 3, 2017, Motion requesting A Copy of Brief filed By Assigned Attorney for Defendant Attorney James C. Wyatt. (Vol. 3, HT 495).

January 23, 2017, Motion to Request Appointment of Counsel and to Release the Appointment of Counsel James C. Wyatt from All Duties of Involvement of the Above Action and Appeal. (Vol. 3, HT 487-493).

### **Trial Court Orders on Appointment of Appellate Counsel**

The record contains several orders by the trial court addressing the appointment of new counsel post-conviction.

On February 23, 2016, the court entered its ORDER ON MOTION TO POST-CONVICTION, PRE-APPEAL MOTION. The court states it was informed that trial counsel will be conflicted out for the Motion for New Trial and the appeal, but no new attorney has made an appearance. The court further requests the Georgia Public Defender Council follow up in this regard. The Motion for new appellate counsel was denied. (Vol. 3, HT 409, Respondent's Exhibit 1(c)).

On January 26, 2017, the trial court entered its ORDER ON MOTION TO REQUEST APPPOINTMENT OF COUNSEL. This order addressed a motion to remove Mr. Wyatt as appellate counsel. The court notes the case is on appeal to the Court of Appeals and Mr. Wyatt continues to represent Bryant, and "The Director of the GPDSC has the duty and authority to establish the procedure for providing legal representation in case where a public defender has a conflict. O.C.G.A. §17-12-22. Accordingly, this Court will defer to the GPDSC to replace Mr. Wyatt. Until when and if he is replaced, Mr. Wyatt has the duty to preserve and pursue the Defendant's appellate rights." (Vol.3, HT 485).

### **COURT OF APPEALS ORDER**

Bryant did not receive the appointment of new counsel until remand by the Court of Appeals on February 6, 2017. That order states, in part, "In a post-conviction situation...the legitimacy of a request for appointment of new counsel is per se established, in that trial counsel cannot reasonably or ethically be expected to assert or argue his or her own ineffectiveness.

Garland v. State, 283 Ga. at 205. (Appellant was constitutionally entitled to the appointment of conflict-free counsel to represent him on appeal.)”

On February 9, 2017, the Court of Appeals, in case no. A16A1918, Bryant v. State, ordered remand for the appropriate proceedings concerning ineffective assistance of counsel and the appointment of appellate counsel.

**Appointment of Mr. Haddad, second appellate counsel**

On February 17, 2017, Mr. Juwayn Haddad, attorney at law, filed an entry of appearance as Bryant’s appellate counsel. He amended the Motion for New Trial on July 26, 2017. (HT 515). The hearing was held on August 2, 2017.

On July 23, 2017, Mr. Haddad pursued the second Motion for New Trial by adding claims for ineffective assistance of trial counsel, to-wit: trial counsel failed to object to hearsay from Gentry and Bridges regarding hearsay testimony based on text messages not admitted as evidence, failed to impeach co-defendant Bridges with her plea for probation deal and testify, trial counsel questioned a hearsay witness to describe all of the harmful hearsay testimony from victim, counsel failed to object to a hearsay identification of Bryant as assailant. (HT 523).

The Floyd County Clerk of Court’s file is marked as Respondent’s 1, A-F, of this habeas record. The records from the Clerk include numerous filings by Bryant complaining of Mr. Wyatt’s performance. He raises claims of Wyatt failing to properly investigate the case and obtain all Brady material, obtain the lab reports from the sexual assault exam, challenge the hearsay testimony from trial witnesses, among others. Mr. Haddad did not raise these issues in his Amended Motion for New Trial.

Mr. Haddad represented Bryant at the second motion for new trial hearing. Mr. Haddad did not question Mr. Wyatt concerning his performance as trial counsel except on two issues

Bryant had raised in his filings. In addition, during the hearing the trial court questioned Mr. Haddad about his knowledge of the prior appeal and Court of Appeals briefing and remand.

Mr. Haddad's colloquy with the trial court shows his ignorance of these prior proceedings. He concedes Bryant told him about an appeal, but Mr. Haddad concluded, after searching for an opinion and material through a Court of Appeals search, which revealed no case, that Bryant was mistaken.

The record in the Clerk of Court's file contains the remand from the Court of Appeals. Mr. Haddad did not explain his failure to learn of this proceeding to the trial court. Haddad did not request a continuance during this hearing. He told the court he was ready to proceed, and, according to the transcript, did so without pausing to talk with Bryant or consider his preparation level based upon this new information.

Mr. Haddad acknowledged to the trial court the issues would be limited to claims of ineffective assistance of trial counsel, and that had trial counsel perhaps not raised issues in his brief, then other review was barred. (Vol.1, HT 17). In addition, Mr. Haddad stated that Mr. Wyatt refused to give him his trial file and he was difficult to reach. (Vol. 1, HT 21-22).

Mr. Haddad raises three issues in the second appeal. First, he raised as trial court error the admission of hearsay testimony of Krista Barker, Jimmy Hunter and Tina Gentry.

However, the Court of Appeals ruled that "Bryant's arguments with regards to the trial testimony of Krista Cox Barker and Jimmy Hunter were raised in the first motion for new trial and ruled on by the trial court, but were not raised on appeal when this case first appeared before this Court. Bryant "cannot revive this abandoned issue merely by asserting the error after the remand to the trial court for a hearing and ruling on the issues of trial counsel's effectiveness." (Court of Appeals, sec. 1, p 6).

Thus, Bryant is barred from asserting his hearsay objection under the Confrontation Clause that Bryant raised during the trial and by his pro se filings with the Floyd County Clerk's Office following the conviction, for approximately one year.

Mr. Haddad did not raise an ineffective assistance of trial counsel claim based on trial counsel's deficient trial preparation and Brady violations. As referenced *infra*, Bryant clearly raised objections to Brady issues by Mr. Wyatt not obtaining the investigator's audio recordings of the late Ms. Hudgins and her nephew, who testified at trial and was in the room with her.

Another Brady issue that is clear from Bryant's numerous pro se filings concerns the failure of obtaining the scientific reports from nurse Gentry's sexual assault exam. According to the report the following items were put into evidence:

“Evidence collected and Submitted to Crime Lab: 1 pr. pink panties”

“2 swabs, 2 slides, vaginal and cervical”

Photo Documentation Methods: yes; body, genitals.

(Vol. 1, HT 114-131, 121; Petitioner's Ex. 3)

Mr. Wyatt testified that he does not have an audio recording of what Ms. Hudgins said to the police. He does not recall an audio recording from Ms. Hudgins. (Vol. 1, habeas hearing May 14, 2020, p 39,79). Mr. Wyatt was attorney of record for Bryant and was present, and crossed examined Investigator Ramey at the preliminary hearing, when the audio recording was discussed of both Ms. Hudgins and witness Jason Kilgore. (Court exhibit 1).

Mr. Wyatt did not speak to the sexual assault examination nurse, Ms. Tina Gentry, before trial. (Habeas Hearing Transcript May 14, 2020, Vol. 1, p 43).

During plea bargaining, Mr. Wyatt said the prosecutor would have been happy with a plea of aggravated assault and a sentence of 10 years, serve 5. (Habeas Hearing Transcript May 14,

2020, Vol. 1, p. 56). He did advise Bryant that with no victim, the state had no case. (Habeas Hearing Transcript May 14, 2020, Vol. 1, p. 60).

Mr. Wyatt confirmed his knowledge of the plea deal that Kimberly Bridges received the day before Bryant's jury trial. Bridges pled guilty to the lesser included reduced charge of aggravated assault. (A review of the guilty plea transcript testimony fails to show the element of use or threatened use of a weapon, an essential element of the offense of conviction.)

Ms. Bridges was in jail at the guilty plea, and according to the agreement, she received two years on probation and was required to testify against Bryant. (Habeas Hearing Transcript May 14, 2020, Vol. 1, p. 77-78).

Mr. Wyatt and the GPDSC went back and forth for approximately a year over getting appellate counsel appointed. He testified he did not know of Bryant raising ineffective assistance over his performance before he appealed to the Court of Appeals. (See list of ineffective pro se filings, listed *infra*) (Habeas Hearing Transcript May 14, 2020, Vol. 1, p.79-80).

His contract with the PDSC did not include appellate representation, but at that time, the person in charge of appointing counsel at the PDSC was argumentative, and Mr. Wyatt was frustrated in getting appellate counsel. (Habeas Hearing Transcript May 14, 2020, Vol. 1, p 80).

Bryant has now filed the instant habeas petition.

#### GROUND FOR RELIEF

In ground 1 of his original petition, Petitioner raises five claims: (a) Petitioner's co-defendant, Kimberly Bridges, provided conflicting, perjured testimony; (b) the victim's examining nurse, Tina Gentry, stated that the victim's vaginal injuries were not necessarily caused by Petitioner; (c) trial counsel was ineffective for failing to object to certain testimony regarding

certain text messages; (d) the trial court erred in admitting certain hearsay statements; (e) and the trial court erred in failing to charge the jury on sexual battery.

In ground 2 of his original petition, Petitioner alleges that his arrest warrants are null and void, since they were issued without probable cause.

In ground 2 of the first amendment (Mr. Bryant doesn't list a "ground 1" in the first amendment), Petitioner alleges that the Georgia Court of Appeals erred when reviewing trial court's rulings regarding the admission of evidence for a clear abuse of discretion.

In ground 3 of the first amendment, Petitioner alleges that the Georgia Court of Appeals erred in determining that nurse Tina Gentry's testimony did not contribute to the verdict.

In ground 4 of the first amendment to the petition, Petitioner alleges that (a) the jury's verdict on the aggravated sexual battery count was "inconsistent," since Kimberly Bridges provided perjured hearsay testimony; and (b) trial counsel was ineffective for failing to object to opinion testimony from nurse Tina Gentry—the nurse who treated the victim—that the victim's injuries were consistent with having been sexually assaulted.

In ground 6 of the first amendment to the petition (Mr. Bryant doesn't list a "ground 5"), Petitioner alleged that trial counsel was ineffective for failing to have family members testify at the sentencing hearing.

In ground 7 of the first amendment to the petition, Petitioner alleges (a) that the trial court violated Pate v. Robinson, 383 U.S. 375 (1966); and (b) that trial counsel was ineffective for the reasons stated in Indiana v. Edwards, 554 U.S. 164, (2008), and Dusky v. United States, 362 U.S. 402 (1960).

In ground 8 of the first amendment to the petition, Petitioner alleges that the trial court erred by sentencing Petitioner as a recidivist when his prior convictions were not included in the indictment and were not read to the jury.

In ground 9 of the first amendment to the petition, Petitioner alleges (a) that trial counsel was ineffective for failing to move for a mistrial after the State introduced—without first giving notice—written and oral statements of witnesses to police/investigators; and (b) that the trial court erred by failing to conduct a hearing as to whether Mr. Wyatt was operating under a conflict of interest during his post-trial representation of Petitioner.

In ground 10 of the first amendment to the petition, Petitioner alleges (a) that the State committed prosecutorial misconduct by failing to disclose statements made to police that Petitioner's "fingers were down there and investigator's testimony where statements were made of the alleged victim being fully clothed, and an alleged hand was down the pants"; (b) that trial counsel was ineffective for failing to suppress any and certain recordings of statements made by the victim; and (c) that the State "failed to admit recordings and panties and test results of all biotechnology findings."

In ground 11 of the first amendment to the petition, Petitioner alleges that the trial court erred by (a) permitting Bridges to testify when she admitted that she had already pled guilty, and (b) charging the jury that they must determine the credibility of the witnesses.

In ground 12 of the first amendment to the petition, Petitioner alleges that he is entitled to habeas counsel, since he received a sentence of life without parole.

In ground 13 of the first amendment to the petition, Petitioner raises twenty-five claims (referred to here alphabetically as Parts (a) through (y)), **including those alleging ineffective**

assistance of appellate and trial counsel, trial court error, and various other purported violations of his rights.

Specifically, Petitioner alleges that appellate counsel was ineffective for failing to (a) raise the issues that trial counsel had preserved for appeal, and (b) adequately consult with Petitioner during the post-trial proceedings.

In addition, Petitioner raises sixteen claims of trial counsel ineffectiveness—specifically that trial counsel was ineffective for:

- (c) failing to communicate a plea offer to Petitioner;
- (d) misinforming Petitioner that without a victim, there was no case;
- (e) not properly representing Petitioner, since no statement by the victim was given to law enforcement, the prosecution withheld exculpatory evidence, and Mr. Wyatt failed to present favorable/mitigating witnesses on Petitioner's behalf;
- (f) failing to suppress cell phone recordings/contents;
- (g) failing to present evidence from Investigator Ginger Ramey that the victim told her that Petitioner did not place his fingers inside of her, as well as testimony from Jason Kilgore's statement that the victim was fully clothed when he saw her;
- (h) stating in a pre-trial motion that the victim told police that Petitioner placed his fingers inside of her;
- (i) stating at the preliminary hearing that it was "sort of" an admission when Petitioner apologized to the victim;
- (j) stating to the trial court that there may be signs of sexual activity but no penetration when the nurse did not testify as to finding any such evidence;

(k) operating under a conflict of interest, sleeping in trial, and not wanting to represent Petitioner;

(l) failing to impeach or question Nurse Gentry as to whether she was a licensed forensic interviewer, and not objecting when the trial court admitted the statement as non-testimonial;

(m) failing to request a 404(b) hearing regarding the admission of Petitioner's prior convictions;

(n) failing to interview key witnesses and ensure that they weren't being "coach[ed]" by the State;

(o) failing to object when Petitioner was not afforded an opportunity to cross-examine the victim during the probation revocation proceedings;

(p) failing to conduct an adequate investigation of the law to determine whether the indictment cured the defective arrest warrant;

(q) failing to adequately investigate the case, since the only investigation included reviewing the prosecution's file;

(r) failing to permit Petitioner to further question co-defendant Bridges, after Bridges stated that the victim did not want Bridges and Petitioner to "get back together."

(s) in ground 13 of the second amendment, Petitioner also alleges that the trial court erred by sentencing Petitioner to life without parole when he had not previously been convicted of a serious violent felony;

(t) imposing recidivist punishment when he had not been previously informed that, as a consequence of pleading guilty, his guilty plea conviction could be used in aggravation of sentencing in a future case; and

(u) failing to instruct the jury that the co-defendant's testimony that she pled guilty had an effect on Petitioner's character.

Finally, Petitioner alleges that (v) his rights under the confrontation clause were violated when the victim testified at a prior probation revocation proceeding and he was not able to cross-examine her; (w) the State committed prosecutorial misconduct by stating that Petitioner was being supervised pursuant to sex offender punishment; (x) Petitioner was unable to file a petition for a writ of certiorari because he could not understand the form; and (y) the evidence was insufficient because it was entirely circumstantial.

In ground 1 of the second amendment to the petition, Petitioner alleges again that trial counsel was ineffective for failing to object to the hearsay testimony regarding statements made by the victim.

In ground 2 of the second amendment, Petitioner alleges that trial counsel was ineffective for failing to (a) object to witness's testimony regarding incriminating text messages that were never introduced at trial; (b) object on the grounds that the State failed to prove the indictment; (c) properly cross-examine Bridges with the plea deal to show motive or bias; and (d) object to Bridges' testimony about observing the Petitioner placing his fingers inside of her.

As illustrated above, the Petitioner's claims are numerous. In an effort to promote judicial economy, only the enumerations of error that are not barred for this Court's consideration will be analyzed in detail below. It is well established law that any issues previously decided on the merits in a direct appeal may not be relitigated unless there is change in the facts or law. Wiggins v. State, 288 Ga. 169 (2010), Bruce v. Smith, 274 Ga. 432 (2001).

## **FINDINGS OF FACTS AS TO INEFFECTIVE ASSISTANCE OF COUNSEL**

Petitioner claims that both trial counsel and appellate counsel were ineffective within his original and amended habeas petitions. (HT 2, p. 5-10). This Court only has jurisdiction over the ineffective assistance of appellate counsel as ineffective assistance of trial counsel has already been ruled upon by the trial court. Before conducting the legal analysis that this ground requires, the Court finds it important to note the procedural history in regard to Petitioner's claim of ineffective assistance of counsel.

As already discussed, the Petitioner filed several motions prior to the first Motion for New Trial being held requesting new counsel on the grounds that trial counsel, Mr. James C. Wyatt, was ineffective. The trial court issued two orders denying Petitioner's motion, stating specifically that they were deferring this issue to the Georgia Public Defenders Standards Council and he was not releasing trial counsel. (July 20, 2016; Respondent's Ex. 4, p. 9). Thus, Petitioner's direct appeal was pursued by his trial attorney who he claimed was ineffective.

Mr. Wyatt filed a motion for new trial and a hearing was held. Shortly before the hearing, Bryant signed a statement, which is in the Clerk's file, that he wanted to go forward with the hearing and keep Mr. Wyatt as his attorney. However, during the hearing Mr. Wyatt and the trial court discuss the effort by Mr. Wyatt to get new counsel for the appeal because Bryant was complaining about this before and after trial.

During the Motion for New Trial hearing, the trial court never inquired of Bryant whether he wanted to raise any claims of ineffective assistance of counsel nor inquire if Bryant was satisfied with his trial attorney handling this motion, even though the trial court was aware of Petitioner's numerous motions to remove trial counsel. (HT 2, Vol 6, p. 847-857).

The trial court denied the Motion for New Trial and Mr. Wyatt filed a notice of appeal in the Court of Appeals.

During the first motion for new trial hearing, the court inquired of trial counsel, Mr. Wyatt:

Q: The Court: You mentioned something that you reported to the Public Defender Standards Council about claims and I was following up with that response. What was that about?

A: Mr. Wyatt: It was just--you know, they did not appoint--if there was not an ineffective claim generally they make an attorney do their own appeal, but in my case I had not done an appeal for two or three years because it was standard practice, since I was a conflict attorney, that I could not handle that case load, and my appeal would automatically go to an appellate attorney, whether it was ineffectiveness or not. During that time, whoever was in charge of appeals was--I don't think he is anymore--was kind of argumentative and said that I had to pinpoint an exact reason of why it was ineffective, why I thought I was ineffective. You know, I informed them that my client had constantly complained about my services before trial and after trial, so it was frustrating to me because I tried to get out of the case at an early stage, and finally did get out of the process at the motion for new trial.

(HT 2, Vol 1, p. 80).

Due to trial counsel not being replaced, the first direct appeal of Petitioner's case was not fully presented to the Court of Appeals. Trial counsel, as ordered by the trial court, after numerous pro se filed motions by Bryant for his discharge, was performing the appeal duties under conflict. This conflict has a ripple effect of adverse consequences to Petitioner's motion for new trial hearing, second motion for new trial hearing, and more importantly, the brief filed in the Court of Appeals by both attorneys, which will be discussed in more detail below.

#### **Mr. Haddad's Appearance as Second Appellate Counsel**

After the Court of Appeals remand for hearing on ineffective assistance of counsel claims, Mr. Haddad, appellate counsel, was appointed and filed an initial and amended motion for new trial. During the second motion for new trial hearing, also referenced as the Motion Hearing on Ineffective Assistance of Counsel, the trial court stated,

The Court: "....His trial attorney, Mr. James Wyatt, filed an initial motion for new trial, and then, as I recall, intended to conflict out because of allegations of ineffectiveness. And, as I recall, Mr. Wyatt, the council wouldn't let you?"

Mr. Wyatt: Basically, they--*the council wrote a letter to Mr. Bryant*, and he decided to keep me at that point. (emphasis supplied).  
HT 2, Vol. 6, p 863-865.

The Court and Mr. Wyatt continue regarding the Court of Appeals:

THE COURT: I think these instruct--it was even stranger than that. The court of appeals was under some misunderstanding, as I recall or some--it wasn't clear to the court of appeals what the procedural posture was, but let me look at this order again, because Mr. Bryant was also filing a number of pro se motions along the way.

Oh, this was the misunderstanding: During the course of the appeal, trial counsel indicated to the Court of Appeals that he had been released from Bryant's case by order of the trial court, dated July 20, 2016.

That's not the case, so I never released you. In fact, I think that order said you weren't released. But that order on--that order I entered not releasing you was not before the Court of Appeals. So they didn't know exactly what it said.

At this point, the trial court asks if Mr. Haddad, newly appointed appellate counsel, has anything to add to the court's comments, to which Mr. Haddad responds,

Mr. Haddad: If you don't mind Judge, I just want to explain to--I had--his is all new to me. When I got the information from GPDC, asking me if I would like to handle the appeal. I said, sure. I filed an entry of appearance. I requested--I called the public--the conflict defender's office, I requested the file. I got the trial transcript. I also got a transcript of a motion for new trial hearing, but on that hearing--the transcript I got was just three or four pages, and it was continued. So I was completely unaware of anything that you just mentioned.

Now, my client did mention to me--he said something about, you know, motions for new trial and appeal. And, you know, sometimes clients are confused, so I actually went on Lexis to see if, in fact there was an opinion issued. And maybe I misspelled the name or something, but nothing came up.

So I've got it in I filed, you know, just what I thought were alleged, you know, errors. Some of it sounds like were maybe perhaps already addressed. So I don't know--my posture now, obviously, is I am raising ineffective. I want to call him to the stand: Mr. Wyatt. (HT 2, Vol. 6, p 866- 877).

The court then clarifies that:

[A]nd, by the way, just to clarify, that July 20, 2016 order on Mr. Bryant's motion to release his attorney while the case was on appeal, my order said: Mr. Wyatt is an attorney with the conflict's division of the council. The director of the council has the duty and authority to establish the procedure for providing legal representation in cases where a public defender has a conflict of interest. Accordingly, the court will defer to the council to replace Mr. Wyatt in the event he has a conflict of interest. Until when and if he is replaced, Mr. Wyatt has the duty to preserve and pursue the defendant's appellant's rights. (HT 2, Vol. 6, p 868).

The trial court confirms that he declined to release Mr. Wyatt as Petitioner's counsel, regardless of his claims of ineffective assistance of counsel, and the resulting direct appeal caused the waiver of the Court of Appeals fully considering the Confrontation Clause objection, the Brady violation claim, and the Sixth Amendment right to effective assistance of counsel.

The result of ordering Mr. Wyatt to continue as appellate counsel caused prejudice to Bryant on claims of ineffective assistance of trial counsel, which were only partially raised by Mr. Haddad. The Court of Appeals, in its order of remand, emphasizes the constitutional right of all persons to conflict-free counsel on appeal. The right is lost, in some cases such as this case, when trial counsel operating under a conflict, notwithstanding a review of his own trial counsel performance, makes appellate decisions that ultimately prevent a full review of the conviction on appeal.

Here, trial counsel's pre-trial decisions and appellate decisions permanently shape what issues are presented and considered on appeal. The case, in procedure and substance, is fixed and static by Mr. Wyatt's conduct before conflict-free appellate counsel appears. His making all decisions of error for briefing and deciding which issues not to raise as error is per se unconstitutional error and harmful.

These decisions with prejudicial consequences include the waiver of a proper Confrontation Clause challenge to the hearsay testimony from State's witnesses Barker, Gentry and Hunter. The hearsay error raised by Mr. Haddad in the Court of Appeals was per se deficient performance. Mr. Haddad cites authority from 2006, which is clearly invalid law after the adoption of the new evidence code in 2013, to support his argument the hearsay from Krista Barker and Jimmy Hunter was error. The Court of Appeals' opinion points out that these cites refer to the old evidence code and the incorrect admissibility test. (Opinion 8).

Recently, the Court of Appeals held it is error for the trial court to use the "necessity exception" authority to evaluate admission of hearsay because the 2013 evidence code does not include this old standard. McEady v. State, 2020WL3459043; A20A0185 (June 20, 2020). Both attorneys for Bryant committed this error in their representation. The Court of Appeals' opinion demonstrates the harm in citing invalid law to support a basis for appellate relief.

After Mr. Haddad learned of a significant change in the posture of his client's case, he proceeded with the hearing, questioned trial counsel without preparation or consideration of Bryant's previously filed claims, according to the transcript of his brief questioning, consisting of seven pages. (Respondent's Exhibit 3, Hearing on Ineffective Assistance of Counsel, August 2, 2017, pp. 11-18; HT Vol. 6 of 7). No request to continue was made to investigate trial counsel's performance, read the Court of Appeals orders or consult with Bryant.

The trial court denied the motion on claims for ineffective assistance of trial counsel. Mr. Haddad appealed to the Court of Appeals.

#### **Second Appearance in the Court of Appeals**

The Court of Appeals issued its unpublished opinion affirming the conviction. The opinion cites Mr. Wyatt's brief's failure to raise claims that resulted in waiver of their review in the second

brief by Mr. Haddad. Specifically, any error on the hearsay from Krista Barker and Jimmy Hunter were abandoned by Mr. Wyatt and thus barred for review by Mr. Haddad's brief. (Opinion p. 6).

This demonstrates actual harm to Bryant.

Mr. Haddad, in the second brief of error to the Court of Appeals, raised trial court's admission of hearsay testimony from Jimmy Hunter and the nurse, Tina Gentry, and Krista Barker.

The Court of Appeals, citing long established rules, determined Bryant was barred from raising a Confrontation Clause challenge to the hearsay testimony of Jimmy Hunter, the boyfriend of Hudgins and Krista Barker. The cause of the waiver occurred by Wyatt's failure to raise as error the hearsay objection to the testimony of Barker and Hunter in his brief to the Court of Appeals. (HT 2, Vol. 6, p 950). The only hearsay enumeration of error asserted by Wyatt concerned Gentry, the examining nurse, which testimony was admitted under the medical treatment exception.

It is important to note that Mr. Wyatt filed a pretrial motion on April 28, 2015, titled "Argument of defendant claims statement of victim to police is inadmissible[sic]" and the court conducted a pretrial hearing. Mr. Wyatt also objected to this testimony during trial. (T. 53). The trial court allowed a standing objection to the hearsay testimony. (T. 58, 79-80). Consequently, it cannot now be maintained that Mr. Wyatt was unaware of the hearsay objection that he failed to appeal.

Mr. Haddad failed to raise this hearsay objection in his amended motion for new trial filed on July 26, 2015. (Habeas T. 515). On appeal, Mr. Haddad did raise the hearsay objection to the testimony of Tina Gentry, overruled on the medical exception grounds, and to Krista Barker and Jimmy Hunter. In doing so, however, Mr. Haddad cites to invalid authority by reference to the

incorrect standard of admissibility from the old, pre-January 2013 evidence code. (Habeas T. 522).

The Court of Appeals opinion states the prejudicial effect of the waiver, stating in section 1,

Bryant contends that the trial court erred in admitting testimony from K.C.B. (Krista C. Barker), J.H. (Jimmy Hunter), and T.G. (Tina Gentry), regarding statements that S.H. (Hudgins) allegedly made to them. Bryant's arguments with regards to the testimony of K.C.B. and J.H. were raised in the first motion for new trial and ruled on by the trial court, but were not raised on appeal when this case first appeared before this Court. Bryant cannot revive this abandoned issue merely by asserting the error after the remand to the trial court for a hearing and ruling on the issue of trial counsel's effectiveness. Opinion, p.6.

Although waived, the Court of Appeals considered the objection to Krista Barker's hearsay, along with the preserved hearsay objection to Tina Gentry. Importantly, both Mr. Wyatt in his trial court motion as well as Mr. Haddad, make invalid citations of authority to pre-2013 evidence law. This error cannot be deemed reasonable trial strategy. Holmes v. State, 304 Ga. 524 (2018) (holding error in citing to the old necessity exception standard of admissibility for O.C.G.A. 24-8-807 analysis).

The state gave pre-trial notice to Bryant that it intended to use the hearsay testimony of Barker, Hunter and Gentry. The court entered an order allowing it. This issue was not adequately presented for review. In Wilson v. State, 301 Ga. 83 (2017), the residuary exception to allow hearsay is "to be used very rarely and only in exceptional circumstances. Rivers v. U.S., 777 F3d 1306, 1312, (11) (11<sup>th</sup> Cir. 2015), holding that "such guarantees must be the equivalent to cross-examined former testimony."

As to Krista Barker, Ms. Hudgins' prior daughter-in-law, Bryant points to an affidavit in the habeas record that she expressed an intent to get Bryant in trouble, based on a sexual relationship. (HT, Vol. 2, p. 113) Jimmy Hunter was Ms. Hudgins' boyfriend. It was well known that Bryant and Ms. Hudgins had been in a multiyear relationship years before this case. Mr.

Hunter was not an unbiased witness. His girlfriend at the trial was the alleged victim of a sexual assault, which occurred while he was asleep in another room.

#### **CONCLUSIONS OF LAW AS TO INEFFECTIVE ASSISTANCE OF COUNSEL**

It is well established that the governing standard for ineffective assistance of counsel claims is Strickland v. Washington, 466 U.S. 688 (1984). In order to prevail, a petitioner must show: (1) counsel's performance was deficient, which requires a showing that counsel made errors so serious that he was not functioning as "counsel" guaranteed by the Sixth Amendment; and (2) this deficient performance prejudiced the defendant, by showing there is a reasonable probability that, but for counsel's errors, the result of the proceeding "would have been different." Id. at 687, 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Id. at 694. Unless a petitioner satisfies both prongs of the Strickland test, he is not entitled to relief. Id. at 687, 697.

The Georgia Supreme Court has adopted Strickland for analyzing an appellate attorney's performance. Shorter v. Waters, 275 Ga. 581, 571 S.E.2d 373 (2002). Further, "in evaluating appellate counsel's performance, for purposes of claim of ineffective assistance of counsel, the question is not whether an appellate attorney's decision not to raise a particular issue was correct or wise, but rather whether his decision was an unreasonable one which only an incompetent attorney would adopt." Griffin v. Terry, 291 Ga. 326, 729 S.E.2d 334 (2012). To establish prejudice, a petitioner must show that but for counsel's unprofessional errors, the result of the proceeding would have been different. Id.

Where the claim is that appellate counsel was ineffective for not raising claims of trial counsel ineffectiveness, "two layers of fact and law are involved in the analysis of the habeas court's decision." Gramiak v. Beasley , 304 Ga. 512 (2018). In order to find that appellate counsel

provided ineffective assistance, the habeas court must determine that appellate counsel's performance was deficient in not raising the issue. Id. at 513. If the Court finds that the appellate counsel performance was deficient, the petitioner must establish prejudice. Prejudice requires proving that if the ineffective claim had been raised on appeal, there is a reasonable probability that the outcome of the appeal would have been different. Id.

While an appellate attorney does not have a duty to raise every non-frivolous issue request by a client, a petitioner can still raise a Strickland claim based on an appellant attorney's failure to raise a particular claim. Jones v. Barnes, 463 U.S. 745 (1983), Smith v. Robbins, 528 U.S. 259 (2000).

Appellate counsel failed to provide effective assistance of counsel in two main ways; 1) he failed to properly assert the ineffective assistance of counsel claim; and 2) he failed to properly raise other errors on appeal. These failures prejudiced the petitioner as set forth below.

I. The Court finds that appellate counsel failed to properly assert the ineffective assistance of trial counsel claims.

While appellate counsel asserted in a limited manner that trial counsel was ineffective in his motion for new trial and in his brief to the Court of Appeals, his representation was deficient.

a. Appellate Counsel's Failure to Properly Investigate Petitioner's Case

During the Second Motion for New Trial hearing, Mr. Haddad learns for the first time that a previous motion for new trial was heard with Mr. Wyatt as trial counsel, and that Mr. Wyatt had appealed and briefed the Court of Appeals, and that the Court of Appeals remanded the case for a determination of ineffective assistance of counsel claims. (HT Vol. 6 of 6, p 866, Motion On Ineffective Assistance of Counsel). Mr. Haddad recognized this history greatly affected his representation by stating,

MR. HADDAD: So I've got it in. I filed, you know, just a--just what I thought were alleged, you know, errors. Some of them it sounds like were maybe perhaps already addressed. So I don't know--my posture now, obviously, is I am raising the ineffective I want to call him to the stand: Mr. Wyatt.

THE COURT: Right.

MR. HADDAD: I just want to ask him a few questions. But my--my issue really is the-- the other bigger issue at this point--

THE COURT: The other grounds.

MR. HADDAD: The other grounds. I don't know--I mean, I --

THE COURT: Well, the court of appeals' decision that they issued said we shall proceed in accordance with the court of appeals rule 23. I'm not sure what that says. Does anybody know?

MR. HADDAD: Judge, if I may, in an abundance of caution --

THE COURT: Go ahead and argue everything?

MR. HADDAD: -- just argue everything? And the State--we can all hash it out at the court--you know, at the next level, you know.

Instead of asking for a continuance, Mr. Haddad states he is ready to proceed with hearing rather than investigate Petitioner's case, which results in Mr. Haddad binding Petitioner to legal claims and enumerated errors chosen by his prior conflict-ridden trial counsel without investigating the numerous claims of ineffective assistance raised by Bryant in his filed objections. Mr. Haddad demonstrates his ineffectiveness in his colloquy with the court. The Clerk's file contained the appeal remittitur and at least four motions by Bryant on ineffective assistance issues, yet Mr. Haddad tells the court he is unaware. It is not reasonable representation to continue with the ineffective hearing after learning of the case procedure, as Mr. Haddad performed.

Mr. Haddad admits to the Court that he realizes that he is now procedurally barred from pursuing any claims other than ineffective assistance of counsel. Thus, instead of asking for a

continuance and further investigating his client's claims of ineffective assistance of counsel, reading the brief of the trial counsel, reviewing the first motion for new trial hearing, or even the Court of Appeals' remand, he goes forward with the hearing. These decisions by Haddad under the circumstances were not within the range of decisions of a reasonably competent appellate counsel.

Instead, Mr. Haddad proceeds to question Mr. Wyatt only on the following issues:

- a. Trial court allowing hearsay testimony from sexual assault nurse examiner (incorrectly referred by Wyatt as Tina Fincher) (Habeas T. 872).
- b. Wyatt failing to object to the hearsay statements from Bryant's text messages by two witnesses, (Habeas T. 873).
- c. Failing to cross-examine Ms. Bridges about her plea deal requiring her to testify against Bryant, (Habeas T. 874).
- d. Asking the nurse to repeat all of Ms. Hudgins' hearsay testimony, (Habeas T. 876) (Second Amended Motion for New Trial hearing T. 17).

After Mr. Wyatt leaves the courtroom, the following dialogue occurs between the trial court and Mr. Haddad:

THE COURT: Now, before we proceed further--so you weren't aware of this court of appeals decision last summer?

MR. HADDAD: No, Judge.

THE COURT: Or earlier this year: February?

MR. HADDAD: None, and, you know, to be honest with you, Judge, I'm extremely frustrated with the council, because--

THE COURT: For not telling you that.

MR. HADDAD: Right. I mean, and the paperwork from the public defender--from the conflicts, there was no mention, but you know,

sometimes I have a different file, so you know, I don't--I don't blame the conflict defender. That's--you know--

THE COURT: Well, I wrote David Clark a letter right after the court of appeals--the same day the court of appeals' decision came out, attaching a copy of the court of appeals decision and asking him to appoint new appellate counsel as quickly as possible.

MR. HADDAD: Well, somehow that--you know, they scan their stuff, and they--you know, I had the motion for new trial, the initial motion for new trial. I had the background information, but I had no information, whatsoever, that--

THE COURT: So I've already entered an order on the motion for new trial, you know, the general grounds, and let's see, legal sufficiency, general grounds, Court's failure to grant a mistrial, the testimony of Tina Gentry, failure to charge on a lesser included, all of the grounds raised by Mr. Wyatt.

MR. HADDAD: Well, we are--in that case, Judge, I mean, I am procedurally barred, other than the ineffective assistance of counsel. That sounds like--

THE COURT: That's what--and the court of appeals decision says: Bryant's motion is granted, and we remand the case to the trial court for appropriate proceedings concerning the issue of ineffective assistance of counsel.

MR. HADDAD: Well, that's--that's new to me, Judge. So really the only issue that I'm here for is the--

THE COURT: Ineffective claim. And I will issue an order on that.

(Habeas T. 878-880).

Most unsettling about this discussion is that appellate counsel releases Mr. Wyatt as a witness and reveals in his discussion with the court that he then understands at that moment his only viable claims remaining are ineffective assistance of counsel<sup>1</sup>. But he realizes this only after he releases trial counsel, his only witness. Additionally, Mr. Haddad states at the habeas hearing

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<sup>1</sup> During the habeas hearing, appellate counsel again states that he was under the impression that he was handling a motion for new trial, not just an ineffective assistance of counsel claim. (HT2, Vol. 1, p. 13). He also agrees that he did not review the appellate brief filed by James Wyatt until after the hearing. (HT2, Vol. 1, p. 14.).

that he was not able to speak with trial counsel before the Motion for New Trial hearing, and, in fact, Mr. Wyatt failed to provide him with his file until the same day of the hearing. (HT 2, Vol. 1, p. 18).

Mr. Haddad states “because Mr. Wyatt would not even provide me with the files, so I actually reviewed all the files, made copies at the hearing, and then we proceeded with the hearing.” (HT2, Vol. 1, p. 15 and p. 20) (emphasis added).

It is evident from the above that Mr. Haddad was not prepared for the second motion for new trial hearing. He looked through trial counsel’s file shortly before the hearing and then proceeded with the hearing. Mr. Haddad failed to raise the following claims that a reasonable appellate attorney would have presented :

b. Trial Counsel’s Failure to Properly Investigate and Obtain Discovery before Trial:

Mr. Wyatt failed to obtain the audio tape recording of Investigator Ramey’s interview with Ms. Hudgins<sup>2</sup>. (Preliminary Hearing Page 10, line 5), and of witness Jason Kilgore. Investigator Ramey testified she made an audio recording of both interviews. The failure to obtain these recordings is unreasonable representation and a potential Brady violation. Mr. Wyatt testified during the habeas hearing that he was unaware of an audio recording despite being the attorney at the preliminary hearing. (HT Vol. 1, p. 82).

This court recognizes the possible limitations of use of these recordings. However, the recordings are relevant and material to the issue of the conduct upon which Bryant was convicted, and a conflict exists in the record facts that give rise for the need and the disclosure, and arguably the recording could provide Bryant a defense to the crime charged. The Discovery Act and Brady

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<sup>2</sup> This audio recording of the victim and witness is material and its production is mandatory under the discovery act and Brady. The investigator states at the preliminary hearing that the victim said Petitioner touched her in her “vaginal area” which is different than the elements of aggravated sexual battery which requires penetration. Trial Counsel during the habeas states that he was unaware that any such tape existed. (HT Vol 1, p. 82).

are designed to prevent courts from having to decide these issues before the court. A new trial is the remedy to this age-old failure to follow this constitutionally required criminal procedure.

Investigator Ramey's first report from Ms. Hudgins described the act that petitioner touched her in her vaginal region, which does not contain the aggravated sexual battery element of penetration. The recorded statement is material evidence on the issue. In essence, while we do not know its contents, we do have Investigator Ramey's summary. This audio recording may present materially different information relating to the difference between meeting the elements of the charged crime of aggravated sexual battery and not being able to. See U.S. v. Agurs, 427 U.S. 97 (1975) (holding that the Constitution requires that, upon request by the defendant, the State disclose all favorable evidence which is material either to guilt or to punishment. "(I)mplicit in the requirement of materiality is a concern that the suppressed evidence might have affected the outcome of the trial."). This court finds this failure to obtain, and at a minimum, evaluate for plea bargaining purposes, prepare for cross-examination purposes, prepare for impeachment uses, in support of his request for charging lesser included offense of simple battery, and if convicted, mitigation of sentence.

Mr. Wyatt states during the habeas hearing that "if there was a video recording, I didn't obtain it." (HT2, Vol. 1, p.40).

In addition to this recording, Mr. Haddad failed to question trial counsel regarding his failure to obtain scientific reports and photographs from the sexual assault exam of Ms. Hudgins, and failed to question trial counsel about the absence of report of the swabs and seizure of her clothes for analysis. (HT Vol. 7, p. 1146). O.C.G.A. §17-6-4. <sup>3</sup> The preliminary hearing transcript

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<sup>3</sup> The Court recognizes the State is only required to turn over evidence that they plan on using in their case in chief. It was ineffective assistance of counsel for Mr. Wyatt's failure to request to view the evidence/scientific reports under discovery act production and ineffective assistance of counsel for Mr. Haddad to not raise this issue before either court.

and nurse Gentry's report both state that an evidence bag containing swabs was given to Investigator Ramey. During the Habeas hearing, trial counsel Wyatt feigns no knowledge about any of these items: the absence of hair, DNA or biological material, the report for any substance Ms. Hudgins stated was on her, and review of photographs of the scratch, which had many causes, per nurse Gentry, cannot be reasonably dismissed as not material to the investigation.

Because the Discovery Act and Brady appear at a minimum to require disclosure of this material, this court finds that Mr. Haddad's representation on these two issues is not what a reasonable attorney would do under the circumstances and constitutes deficient performance.

c. Appellate Counsel's Deficient Examination of Mr. Wyatt's Trial Cross-Examination of Co-Defendant Bridges.

While Mr. Haddad does raise the issue of trial counsel's deficient performance in his cross-examination of Kimberly Bridges, Bryant's co-defendant, and the only alleged eyewitness to the incident, his questions fail to obtain relevant information from Mr. Wyatt including: no questions about the victim's clothing (testimony from Jason Kilgore indicated she and Bryant were fully clothed), Bridges' ability to see the event in a dark room in middle of the night, no impeachment regarding her text messages to Bryant stating, "I don't think he did anything," her mental condition based on her admission she was actively using illegal drugs that night, impeachment of her prior inconsistent statement on direct and cross-examination at trial over her knowledge of Bryant going to ask Ms. Hudgins to join them in sex as compared to Bridges' explicitly stating she and Bryant agreed in advance that Bryant was going to perform the act of aggravated sexual battery while Bridges watched.

Appellate counsel did ask Mr. Wyatt briefly about his cross-examination of Kimberly Bridges and her plea deal with the State, but he failed to specifically ask why trial counsel did not

cross-examine her at trial about her requirement to testify against Bryant in exchange for probation, release from jail and avoid the consequence of an aggravated sexual battery conviction, a penalty range of imprisonment for life or split sentence of a term of imprisonment for not less than 25 years and not exceeding life, followed by probation for life and sex offender registration.

O.C.G.A. § 16-6-22.2.

Bias and motive are always relevant. Mr. Haddad did raise this ineffective issue on appeal, but he failed to do so effectively and such work was not reasonable.

The Court of Appeals points out the deficiency: appellate counsel did not provide any evidence that establishes the actual sentence Bridges received in connection with her guilty plea agreement or any evidence showing that she was required to testify. Bryant v. State, A18A0342. This constitutes deficient performance, and such failure by trial and appellate counsel is not reasonable performance. This performance is certainly not trial strategy, nor strategy at the appeals court, to raise an issue but fail to perfect the record for review.

The court finds it important to note that neither trial counsel nor appellate counsel shed light on the benefits that co-defendant Kimberly Bridges received when her sentence was lowered to aggravated assault: the new sentence removes her from sexual offender registration potentially for life, including residence restrictions, presence of minors, and work restrictions. Further, the record contained a transcript of Bridges' plea, within which it is made clear that she is required to testify in exchange for the plea. These items were easily obtainable or in Mr. Haddad or Mr. Wyatt's file, and there is no tactical reason for this failure.

Mr. Wyatt asserted he decided not to cross-examine Ms. Bridges about her guilty plea for tactical reasons. He reasons that, during his testimony in the second motion for new trial hearing,

her sentence was too harsh. Mr. Haddad failed in his duty to reasonably pursue further questions of trial counsel about his decision.

The state called Ms. Bridges to testify in its case in chief. She gave harmful testimony against Bryant that they had a prior agreement that he would commit the act of aggravated sexual battery as she watched.

Motive and bias are always relevant and her plea deal and release from jail was material and probative. No reasonable attorney would not examine her about her plea deal and bring the issue of the requirement for her testimony before the jury. No other witnesses were more important for the state than the alleged eyewitness, Bridges.

Mr. Wyatt stated he did not ask Ms. Bridges about her plea agreement because it was his opinion that she received "quite a hard sentence for her part in this case." Further, he stated she was revoked and got some time and her involvement was minor. Mr. Wyatt did not explain how this sentence was harsh or how he viewed the decision as strategic or how her unchallenged testimony that he committed the aggravated sexual battery benefited Petitioner.

The right of a thorough and sifting cross-examination shall belong to every party as to the witnesses called against the party. O.C.G.A. §24-6-611. The cross-examination by trial and appellate counsel failed to meet the standard and the 6<sup>th</sup> Amendment right to effectively confront all witnesses against him.

- d. Appellate counsel failed to produce the plea agreement or plea transcript during the motion for new trial.

Mr. Haddad claims that Mr. Wyatt, trial counsel, was ineffective for failing to cross examine Ms. Bridges, the co-defendant, regarding the details of her plea deal. However, the Court of Appeals' opinion confirms that no evidence was presented at the hearing on the second motion

for new trial to establish Bridges' sentence under the plea deal or that she was required to testify against Bryant as a condition of her negotiated sentence. (HT Vol. 6, p. 958).

Mr. Haddad's performance is deficient for not obtaining Bridges' guilty plea transcript and failing to obtain her sentence. Both the transcript and sentence explicitly state the plea deal terms: a. guilty to lesser included offense of aggravated assault; b. sentence of two years on probation; c. immediate release from county jail; d. concurrent with probated sentence that was previously revoked; e. testify against Bryant in his trial the following day. (HT Vol. 7, p. 1061-1071).

Two matters are of critical importance here. First, Bridges' probated sentence was previously revoked based upon her arrest in the instant case and she was sentenced to prison. However, based upon her plea deal with the state, according to the plea hearing transcript, she was immediately released from jail. (HT Vol. 7, p. 1061-1071). Something critical is missing from the record which is Bridges' release from the prison revocation sentence, a separate criminal case. She was released from jail after her guilty plea in the instant case, which could only occur with the expiration of the revocation order or an amended release order in that case, neither of which were disclosed by the state nor obtained by Mr. Wyatt or Mr. Haddad. Bryant's demand for any deals by the state mandated the disclosure.

Second, the state did not disclose the terms of the plea deal or the probation revocation deal that allowed her release, and both are required under the demand filed at arraignment and Brady.

Not only did appellate counsel fail to thoroughly cross-examine trial counsel about his deficient examination of co-defendant Bridges about her plea, but he also failed to introduce the evidence that proves that the negotiated plea deal resulted only in probation and required her to testify against Bryant. All of these facts weigh heavily on her truthfulness, and cross-examination on this point is mandatory by any reasonable attorney. As pointed out by the Court of Appeals, it

cannot review for error matters that are not presented by the record. These failures by trial and appellate counsel are deficient and prejudicial. See Davis v. Alaska, 415 U.S. 308, 321, 94 S. Ct. 1105, 1113, 39 L. Ed. 2d 347 (1974).

e. Appellate Counsel was Ineffective for Failing to Present to the Court of Appeals Trial Counsel's Deficient Representation Concerning Nurse Gentry's Hearsay Testimony.

The trial court reviewed pre-trial the question of nurse Tina Gentry giving hearsay testimony she obtained during her sexual assault exam based upon the medical treatment hearsay exception. The trial court ruled it admissible. However, during trial, nurse Gentry expanded her testimony well beyond the medical purpose exception, and read verbatim a long statement from Ms. Hudgins, including feelings and impressions. (HT Vol. 4, p. 621-622).

Mr. Wyatt failed to object and limit the hearsay testimony that exceeded the trial court's ruling on the medial diagnosis and treatment exception. (HT Vol. 4, p 621-622).

In addition, Mr. Haddad failed to question, during the new trial hearing, Mr. Wyatt concerning his decision not to object at trial to this testimony. In addition, Mr. Haddad failed to enumerate and brief the issue as error on appeal. There is a reasonable probability that the appeal would have been different if the issue was properly presented to the Court of Appeals for review.

In State v. Almanza, 304 Ga. 553 (2018), the Supreme Court clarified the limits of the medical treatment hearsay exception. The Court stated that, "the Renville test acts as an effective gatekeeper for the admissibility of statements under the medical diagnosis and treatment hearsay exception in Federal Rule 803 (4). The Court points out the key focus courts must apply when considering this exception is motive. Almanza states, "[s]ome courts have observed that not all judicial applications of the Renville test have focused on the key question of the declarant's motive or state of mind. (citations omitted).... The Renville test is a straightforward but rigorous two-step

test for the admissibility of hearsay statements under Federal Rule 803 (4) generally. Renville, 779 F.2d at 436. First, “the declarant’s motive in making the statement must be consistent with the purposes of promoting treatment[.]” Id. Second, “the content of the statement must be such as is reasonably relied on by a physician in treatment or diagnosis.” Id. These two prongs ensure that the hearsay statement has a sufficient guarantee of trustworthiness while excluding statements beyond the scope of the rule. Almanza further states that “only those statements actually reasonably pertinent to a health care provider’s diagnosis and treatment of the patient are admissible under the exception to the rule against hearsay for statements made for the purposes of diagnosis or treatment, and not just anything uttered during a medical exam, even if said with a subjective belief that the statements would be used for diagnosis or treatment.”

Not only did the state have Ms. Gentry read the long narrative hearsay statement, Mr. Wyatt on cross-examination had her read the hearsay statement a second time. Much of the statement was not connected to or needed for medical treatment, exceeded the scope of medical hearsay for treatment, especially when no issues of physical violence or abuse were present.

II. Appellate counsel was ineffective by failing to provide supporting evidence for his enumeration of error and for failing to properly brief the issues of hearsay before the Court of Appeals.

Mr. Haddad’s issues to the Court of Appeals are 1) that the trial court improperly allowed in hearsay, and 2) he argued that trial counsel was ineffective. The Court of Appeals states in its unpublished opinion several pieces of evidence that the appellate attorney failed to provide to support his claims. In addition, the Court notes that Mr. Haddad cites authority from the pre-2013 evidence code.

In part due to his failure to provide pieces of evidence as well as his failure to provide the correct supporting case law and statutes, the Court of Appeals summarily dismisses his claims. (HT Vol. 6, p. 952-958). This prejudiced the Petitioner's ability to successfully argue and put before the court his arguments. The errors will be laid out in more detail below.

a. **Appellate counsel fails to demonstrate the inadmissibility of text messages.**

Mr. Haddad argues that trial counsel was ineffective for failing to object to a witness testifying about text messages sent between the victim and Petitioner. The appellate court states that Bryant did not demonstrate prejudice because he has not demonstrated that the testimony about Bryant's apology in the text message was not admissible pursuant to O.C.G.A. §24-10-1004, citing Crankshaw v. State, 336 Ga. App. 700 (2016) stating that Mr. Haddad misapplied Crankshaw. (HT Vol. 6, p. 957).

The record shows Mr. Haddad did not question Mr. Wyatt about his knowledge of the text messages including the availability or whether the State produced the records, obtained the records or decided not to pursue same. These questions are necessary for Mr. Haddad to pursue his claim of error under O.C.G.A. §24-10-1004.

By failing to ask these questions of Mr. Wyatt, Mr. Haddad was unable to provide the evidence needed to show that trial counsel was, in fact, ineffective. The prejudice results from the Court of Appeals' denial, and although speculative to what the records would show, Bryant suffers the harm from two levels of his attorneys not reasonably performing the duty of counsel.

b. **Appellate counsel failed to properly brief the hearsay issue to the Court of Appeals.**

Mr. Haddad asserts trial court error by admitting testimony from Krista Barker, Jimmy Hunter and Tina Gentry. The Court of Appeals held that Bryant previously raised issues of hearsay testimony of Krista Barker and Jimmy Hunter in his first motion for new trial, which were denied,

but failed to raise this error in the Court of Appeals. The Court held Bryant cannot revive these issues he abandoned in his first brief.

This opinion establishes prejudice from Mr. Wyatt's first brief. The use of the residuary hearsay exception was critical for the state's proof. In fact, four state witnesses gave hearsay testimony under the application of this hearsay exception. Challenging and preserving this issue was required by a reasonable attorney standard.

First, Mr. Wyatt failed to challenge the hearsay testimony by applying correct evidence code authority. See his pre-trial motion objecting and citing 2006 evidence code authority.

Second, during the second appeal, Bryant was barred from a proper evaluation of error due to waiver from Mr. Wyatt's brief, which he filed while under a clear conflict of interest.

Third, the Court of Appeals reviewed, although waived, the hearsay testimony from Krista Barker, but a fair reading of the opinion shows the Court having to make the analysis without aid from appellate counsel because his brief failed to present argument and lacked citation to valid authority.

Fourth, Mr. Haddad states that "even assuming that the testimony of Krista Barker and Jimmy Hunter were offered as evidence of material fact, it clearly does not meet the other two requirements of O.C.G.A. §24-8-807 and therefore should have been ruled inadmissible" (HT Vol. 6, p. 951-952).

Instead of providing legal argument, he simply cites to three separate cases. All three of his citations of authority are old "necessity exception" cases that are no longer the statute. See Ballin v. State, 307 Ga. 494, 496, 837 S.E.2d 343, 346 (2019). See Miller v. State, 303 Ga. 1 (2018) (holding that admissions of evidence in cases held after January 1, 2013 must be examined

under the new Evidence Code). Citing to three cases which have been replaced by the 2013 new evidence code is *per se* ineffective.

Therefore, not only did Mr. Haddad fail to preserve these errors, he did not support his arguments with any legal analysis and valid law. These failures are examples of ineffective assistance of counsel that prejudiced Bryant.

There is a reasonable probability that if the hearsay issue had been supported by applicable case law, such as *Rabun v. Rabun*, 341 Ga. App. 878 (2017) (holding that residual hearsay exception was intended to be used only rarely, and was not intended to provide a broad license for trial judges to admit hearsay statements that do not fall within one of the other exceptions contained in the evidence rules), there is a probability that the Court of Appeals would have found differently on the hearsay issue.

Further, as another example of appellate counsel's ineffectiveness, he failed to raise the hearsay objection as a violation the Confrontation Clause. In evaluating the hearsay issue, the opinion reveals that the Court of Appeals used the test laid out in *Perez v. State*, 303 Ga. 188 (2018), (holding “the test for determining nonconstitutional harmless error is whether it is highly probable that the error did not contribute to the verdict.”). A 6<sup>th</sup> Amendment violation must be found to be harmless beyond a reasonable doubt.

- c. Counsel failed to produce the plea agreement or plea transcript during the motion for new trial.

Appellate counsel asserted that Mr. Wyatt, trial counsel, was ineffective for failing to cross examine Ms. Bridges, the co-defendant, regarding the details of her plea deal. However, the Court of Appeals' opinion confirms that no evidence was presented at the hearing on the second motion

for new trial to establish Bridges' sentence under the plea deal or that she was required to testify against Bryant as a condition of her negotiated sentence. (HT Vol. 6, p. 958).

Mr. Haddad's performance is deficient for not obtaining Bridges' guilty plea transcript and failing to obtain her sentence. Both the transcript and sentence explicitly state the plea deal terms: a. guilty to lesser included offense of aggravated assault, b. sentence of two years on probation, c. immediate release from county jail, d. concurrent with probated sentence that was previously revoked, e. testify against Bryant in his trial the following day. (HT Vol 7, p. 1061-1071).

Two matters are of critical importance here. First, Bridges' probated sentence was previously revoked based upon her arrest in the instant case and she was sentenced to prison. However, based upon her plea deal with the state, according to the plea hearing transcript, she was immediately released from jail. (HT Vol 7, p. 1061-1071). Something critical is missing from the record- Bridges' release from the prison revocation sentence, a separate criminal case. She was released from jail after her plea in the instant case, which could only occur with the expiration of the revocation order or an amended release order in that case, neither of which were disclosed by the state nor obtained by Mr. Wyatt or Mr. Haddad.

Second, the state did not disclose the terms of the plea deal or the probation revocation deal that allowed her release, and both are required under the demand filed at arraignment and Brady.

Not only did appellate counsel fail to thoroughly cross-examine trial counsel about his deficient examination of co-defendant Bridges about her plea, but he also failed to introduce the evidence that proves that the negotiated plea deal resulted only in probation and required her to testify against Bryant. All of these facts weigh heavily on her truthfulness. As pointed out by the Court of Appeals, it cannot review for error matters that are not presented by the record. These failures by trial and appellate counsel are deficient and prejudicial.

### III. Appellate Counsel's Performance was Prejudicial to the Petitioner.

The United States Supreme Court has explicitly stated that Courts must consider prejudice collectively in the context of ineffective assistance of counsel claims and Brady prosecutorial misconduct claims. See Kyles v. Whitley, 514 U.S. 419 (1995); Phillips v. State, 285 Ga. 213 (2009) (holding the combined effect of counsel's errors are considered in determining the prejudicial prong of the ineffective assistance of counsel). In Smith v. Robbins, 528 U.S. 259 (2000), the Supreme Court set out the test for ineffective assistance of appellate counsel. It is a slight variation on Strickland.

Under Robbins, the defendant “must first show that his counsel was objectively unreasonable in failing to find arguable issues to appeal.” Id. at 285, 120 S.Ct. at 764 (citation omitted). The defendant must then show “a reasonable probability that, but for his counsel’s unreasonable failure ... he would have prevailed on his appeal.” Id. Robbins makes clear that a defendant is not required to show a reasonable probability of a different outcome at trial had it been conducted without the constitutional infirmity. Hall v. Warden, Lee Arrendale State Prison, 686 F. App'x 671, 677–78 (11th Cir. 2017).<sup>4</sup>

This court has addressed the extent of Mr. Haddad’s deficient performance. The issue of prejudice exists when there is a reasonable probability that the outcome on appeal would have been different but for the deficient performance See Burgess v. Hall, 305 Ga. 633, 635, 827 S.E.2d 271, 274, cert. denied, 140 S. Ct. 234, 205 L. Ed. 2d 128 (2019). See Gramiak v. Beasley, 304 Ga. 512, 513 (I), 820 S.E.2d 50 (2018) (citing Humphrey v. Lewis, 291 Ga. 202, 211 (IV), 728 S.E.2d 603

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<sup>4</sup> Hall v. Warden, Lee Arrendale State Prison, 686 F. App'x 671, 677–78 (11th Cir. 2017) states that the Supreme Court in Griffin v. Terry, 291 Ga. 326, 729 S.E.2d 334, 336 (2012), runs afoul of §2254(d)(1), because it misapplied the Supreme Court’s decision in Smith v. Robbins, 528 U.S. 259, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000) by requiring the Petitioner to prove that the appeal would have been different as well as the outcome of the trial would have been different.

(2012) (stating “Where the issue is the ineffective assistance of appellate counsel, the showing of prejudice calls for a demonstration that a reasonable probability exists that, but for appellate counsel’s deficient performance, the outcome of the appeal would have been different.”).

The Court has extensively discussed in the sections above how the outcome would have been different but for appellate attorney’s errors.

As previously discussed, the actual harm flowing from this error resulted in hearsay issues being waived and ineffectively presented to the Court of Appeals, including citations to invalid hearsay exception statutes and not raising numerous meritorious ineffective assistance of trial counsel claims. This bound appellate counsel and petitioner from raising error at the second motion for new trial and on the second brief on appeal as they were barred since they had already previously been ruled upon. O.C.G.A. §9-14-48. See Turpin v. Todd, 268 Ga. 820, 831 (1997) (holding that absent compelling reasons, such as a miscarriage of justice, an issue actually litigated and decided on direct appeal is precluded from being relitigated on habeas corpus).

Further, there is a reasonable probability that the Court of Appeals would have ruled differently on the ineffective assistance of trial counsel claim if 1) appellate counsel would have extensively laid out trial counsel’s errors: i.e., failure to investigate, failure to raise Brady violations, failure to obtain recordings and scientific evidence, failure to object to hearsay testimony, and 2) if appellate counsel would have provided the necessary evidence to show prejudice as stated in the Court of Appeals’ opinion, such as the co-defendant’s sentence and the transcript of her guilty plea, there is a reasonable probability the appeal would have been different.

Secondly, the Court finds that there is a reasonable probability that the Court of Appeals would have ruled differently if appellate counsel would have properly briefed the hearsay issues as well as argued the Confrontation Clause problem. The Supreme Court holds that “An attorney’s

ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under Strickland.” Hinton v. Alabama, 571 U.S. 263, 274 (2014).

This is exactly what happened when appellate counsel argued the old evidence code rather than using new case law which supported his claims. Further, there is a reasonable probability that if appellate counsel would have properly argued the Confrontation Clause issues regarding trial court’s error by allowing in testimony of Ms. Hudgins through multiple witnesses, the Court of Appeals probably would have ruled differently. See Pitts v. State, 280 Ga. 288 (2006) (holding that in Crawford, the Supreme Court of the United States “held that the admission of out-of-court statements that are testimonial in nature violates the Confrontation Clause unless the declarant is unavailable and the defendant had a prior opportunity for cross-examination.”); Davis v. Washington, 547 U.S. 813 (2006) (also holding that the Confrontation Clause applies only to testimonial hearsay and that statements are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.).

The failure of appellate counsel to cite any such authority is error regarding Ms. Gentry, and his failure to lay out the facts surrounding her examination constitute ineffective assistance of counsel.<sup>5</sup> Therefore, this Court finds that the Court of Appeals would have probably ruled differently if confronted with the numerous cases which hold that nurse Gentry’s testimony was testimonial in nature rather than non-testimonial. Further, a more in-depth analysis (as already

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<sup>5</sup> The record reflects that Ms. Gentry stated the police called her and asked her to do the exam, that the investigator was waiting outside of the examination room, that she handed over any evidence to the investigator after the examination, that she spoke to the investigator regarding what the victim told her during the exam after the examination was complete, that her report noted there were no other injuries to the victim besides a small abrasion inside of the vagina and thus she was not responding to an emergency medical diagnosis and treatment. All of these facts go to prove the assertion that the testimony of Ms. Gentry was testimonial.

thoroughly explained above) as to the medical exception, would have also probably resulted in a different outcome.

Lastly, appellate counsel failed not only to highlight the numerous ineffective errors by trial counsel, but also by not arguing the manifest injustice suffered by Petitioner when he was forced to continue his direct appeal with a conflict-ridden attorney that he had asked to be removed multiple times. Bryant was constitutionally entitled to the appointment of conflict-free counsel to represent him on appeal and his appellate counsel failed to argue this. See Garland v. State, 283 Ga. 201, 205 (2008). In Garland the court states:

Both men were found to be indigent and were appointed counsel to represent them. They were convicted and both requested the appointment of new counsel in order to raise a claim of ineffective assistance of trial counsel on motion for new trial. The trial court denied the request on the basis of its understanding that it was the policy of the Georgia Public Defender Standards Council (“Council”) not to authorize the appointment of new counsel for purposes of appeal. Thereafter, the Court of Appeals held as to Larry Garland that the trial court “did not err here when it deferred to the public defender’s own policy not to appoint new counsel for purposes of appeal,” Garland v. State, 283 Ga. App. 622, 624(2), 642 S.E.2d 320 (2007); it then applied that ruling to Mack Garland. Id. at 626(6), 642 S.E.2d 320. We granted Mack Garland’s petition for writ of certiorari to address the propriety of this ruling. We now hold that the trial court erred by denying appellant’s request for appointment of new counsel for purposes of appeal and accordingly reverse the decision of the Court of Appeals.

The facts in the current case are analogous to Garland. Further, Garland held that “Accordingly, under Georgia law, the reason for the requested change of counsel is not ‘insubstantial,’ and we reject the position that new counsel should not be appointed without an initial showing that an ineffectiveness claim has potential merit”. Further, the law states that “In a post-conviction situation, however, the legitimacy of a request for appointment of new counsel is per se established, in that trial counsel cannot reasonably or ethically be expected to assert or argue his or her own ineffectiveness, and the request neither obstructs court procedure nor

interferes with the fair administration of justice but rather promotes the prompt resolution of ineffectiveness claims before the judge who presided over the trial, consistent with this Court's policy of affording initial review of such claims by the trial court." Id.

Petitioner was denied conflict-free assistance of appellate counsel during his initial Motion for New Trial and first Brief to the Court of Appeals (all handled by trial counsel). This issue is clear, yet Mr. Haddad failed to raise this error. The Court finds that there is a reasonable probability that the Court of Appeals would have ruled differently if this enumeration of error was presented. See Evitts v. Lucey, 469 U.S. 387 (1985); Garland v. State, 283 Ga. at 202 (holding there is no dispute that a convicted defendant is entitled to effective assistance of counsel on direct appeal); Wood v. Georgia, 450 U.S. 261 (1981); Mickens v. Taylor, 535 U.S. 162, 174–176 (2002) (holding that where a constitutional right to counsel exists, the Sixth Amendment to the United States Constitution requires that counsel's representation be free from conflicts of interest. Thus, a convicted defendant is entitled to appellate representation by conflict-free counsel as a matter of constitutional law.).

Most importantly, since this issue was not raised, appellate counsel was therefore bound by the rule of waiver and procedural bar from Mr. Wyatt's conflicted representation, and all of his attempts to represent Bryant on appeal were, it seems, well intended, but constitutionally infirm.

Therefore, this Court finds that Petitioner meets both prongs of the Strickland analysis and finds that appellate counsel was ineffective. Petitioner has shown that the outcome of the appeal would have likely been different. Therefore, the Court finds this claim to have merit.

#### Cumulative Errors

In State v. Lane, \_\_\_\_ Ga. \_\_\_\_, 838 S.E.2d 808 (2020), the Court states courts considering whether defendant is entitled to new trial should consider collectively prejudicial effect of trial

court errors and any deficient performance by counsel, overruling Grant v. State, 305 Ga. 170, 824 S.E.2d 255; Daniels v. State, 302 Ga. 90, 805 S.E.2d 80; Rivers v. State, 296 Ga. 396, 768 S.E.2d 486; Woodall v. State, 294 Ga. 624, 754 S.E.2d 335; Rice v. State, 292 Ga. 191, 733 S.E.2d 755; Humphrey v. Lewis, 291 Ga. 202, 728 S.E.2d 603; Reese v. State, 289 Ga. 446, 711 S.E.2d 717 and other cases; and also holds that “we also now have discarded our prior precedent to the extent that it says the harmful effect of trial court errors may not be considered cumulatively.” The Court finds no reason that this case cannot be extended to be used in this situation as well. See Schofield v. Holsey, 281 Ga. 809 (2007) (relying on Strickland language to disapprove Court of Appeals’ holding that cumulative effect of counsel’s errors should not be considered).

The court has explained appellate counsel ineffective assistance, and how these numerous errors collectively impacted Petitioner. Appellate counsel was unprepared for the Motion for New Trial hearing, he was unaware of the posture of his client’s case, yet he proceeded with a hearing, knowing he was making binding decisions on Petitioner’s case. He then continued his ineffectiveness in the appeal by failing to raise issues effectively and waiving others.

Petitioner Bryant has repeatedly suffered harm at the hands of ineffective and conflict-ridden counsel. The record reflects that the error outlined herein by trial and appellate counsel prejudiced his constitutional rights as described. Trial Counsel Wyatt attempted to be relieved as appellate counsel, in response to Bryant clearly raising ineffective assistance of counsel claims, but was not relieved. As already stated, Trial Counsel Wyatt explained during the habeas hearing that he was frustrated and arguing with the Public Defender Standards Council about its refusal to appoint new counsel. Yet, he never directly petitioned the Court and asked to be removed. Further, the trial court then ordered Wyatt to continue to handle direct appeal which resulted in Bryant’s

conflict-ridden trial attorney to make binding decisions about what errors would be put before the trial court in the Motion for New Trial and before the Court of Appeals.

These appeal decisions by Mr. Wyatt and Mr. Haddad resulted in the waiver of viable Constitutional Confrontation clause violations concerning Jimmy Hunter's hearsay testimony to the jury. Further, Mr. Haddad's failure to properly raise the Confrontation Clause objection to nurse Gentry's narrative to the Court of Appeals by citing incorrect authority of the old evidence code and not making the clear enumeration of error negatively affected Petitioner's appeal. This inadequate brief required the Court of Appeals to make assumptions regarding his claim, which resulted from Mr. Haddad failing to properly raise and brief issues on appeal.

### III. CONCLUSION

The constitutional rights discussed herein cannot be allowed in a court of law to slip away, unnoticed by the courts, as ineffective counsel slowly erode their duties as counsel, piece by piece, by failing to obtain forensic reports and audio recordings, by failing to conduct effective cross-examination and objections to witnesses, by failing to effectively preserve and present error of trial counsel's deficient performance on appeal, thereby depriving the appellate court of meaningful review to correct error, but without such opportunity, the court's role, in large part, is weighing properly admitted evidence, conducting harmless error analysis, and, in the end, determining the outcome of a criminal investigation, pre-trial and trial proceedings, and two post-conviction appellate processes to determine whether the outcome of these events was constitutional or not. This habeas court, based upon the findings of fact and conclusions of law, is convinced that Petitioner's constitutional rights as discussed were violated.

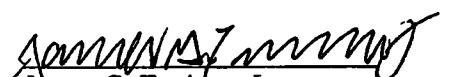
Based upon the foregoing, and in consideration of the cumulative prejudicial effect of the deficient performance of Petitioner's trial and appellate counsel and the specific procedural history of Petitioner's underlying criminal trial and appeals, the Court finds that Petitioner is entitled to a new trial. State v. Lane, supra.

Because the Court finds merit to the Petitioner's grounds for relief within his Petition for Writ of Habeas Corpus, and he has met his burden in showing deficient performance of counsel and resulting prejudice under Strickland v. Washington, supra, IT IS ORDERED that the petitioner's Petition for Writ of Habeas Corpus is hereby GRANTED and he shall be entitled to a new trial.

If Respondent desires to appeal this Order, he must file a Notice of Appeal with the Clerk of the Superior Court of Lowndes County within thirty (30) days.

It is FURTHER ORDERED that the Clerk of this Court shall mail a copy of this Order to the Petitioner, Respondent, and the Office of the Attorney General upon filing.

AND SO ORDERED, this 30 day of June, 2020.



James G. Tunison, Jr.  
Judge, Superior Court  
Southern Judicial Circuit

*Bryant v. Emmons*, 2019-CV-1187  
Superior Court of Lowndes County

Prepared by the Court

**LOWNDES COUNTY, GEORGIA**

I hereby certify that I have this day mailed, hand delivered, or faxed a copy of the following file documents:

- Final Order

The documents were mailed to the following addresses:

Steven Bryant  
GDC# 0001045084  
Valdosta State Prison  
P.O. Box 5368  
Valdosta, GA 31603

Warden Shawn Emmons  
Valdosta State Prison  
P.O. Box 5368  
Valdosta, GA 31603

Office of the Attorney General  
Georgia Department of Law  
40 Capitol Square, SW  
Atlanta, GA 30334

This 1<sup>st</sup> day of July, 2020.



(Deputy) Clerk of Superior Court

Lowndes County, Georgia