No. 22-7318 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Shannon Lancaster,

Petitioner,

v.

Warden of Perry, Respondent.

On Petition for Writ of Certiorari
To the Fourth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Shannon Lancaster
Perry Corr.Inst.
430 Oaklawn Rd.
Pelzer, SC 29669

QUESTION(S) PRESENTED

Whether the District Court and the Fourth Circuit Court of Appeals erred in declining to grant Petitioner a certificate of appealability, where the State PCR Court unreasonably applied clearly established federal law of Strickland, where defense counsel failed to investigate and advise Petitioner that evidence in the case against him could be challenged in a suppression motion pursuant to the South Carolina Homeland Security Act, since counsel's failure to advise Petitioner that he could challenge the admissibility of the recording was ineffective assistance rendering the plea involuntary and unknowingly?

Request for "COA"

LIST OF PARTIES

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

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

W. Joseph Maye
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211-1549

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

STATUTES AND RULES

STATUTES AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

[✓] reported at 2022 WL 1522794; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

[✓] reported at 2022 WL 17268695; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the S.C. PCR Court court appears at Appendix A to the petition and is

[✓] reported at 2018-CP-42-0365; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was November 29,2022.

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

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: February 1,2023, and a copy of the order denying rehearing appears at Appendix D.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on _____ (date) in Application No. A_____.

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

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

The date on which the highest state court decided my case was N/A. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on _____ (date) in Application No. A_____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT

On September 30,2016 a Spartanburg Grand Jury indicted Petitioner for trafficking methamphetamine. App.166-167. The State alleged an undercover officer, James Ruane, called Petitioner on April 15,2016, and asked him to procure $1,200 worth of methamphetamine. The State contended Investigator Ruane picked Petitioner up from his home in Gaffney and eventually took him to a trailor park in Wellford, whereupon Petitioner went into a mobile home, then "came back out and gave Investigator Ruane just under 28 grams of methamphetamine.App.12, 1.24-13,1.15.

On March 14,2017, Petitioner appeared for a plea hearing before the Honorable J. Derham Cole. Petitioner was represented by Ricky Harris. The State was represented by James Hunter. App.1. In accordance with plea negotiations, Petitioner pleaded guilty to one count of trafficking methamphetamine, second offense, with a negotiated range of twelve to eighteen years. Other than the sentencing range of twelve to eighteen years agreed upon, Petitioner was not promised anything in exchange for a guilty plea. App.7,1.20-25; App.8,1.1-4. The State agreed to dismiss by nolle prosequi other pending charges. Petitioner was sentenced to fifteen years imprisonment. App.3,1.5-7,1.13; App.11,11.2-20; App.16,11.22-25; App.168.

A motion to reconsider the sentence was denied. App.19-25. After exhausting his remidies on direct appeal, Petitioner filed an application for post-conviction relief (PCR) on September 4,2018. App.26-42. On September 18,2019, the State made its

return. App.43-55. On September 18,2018, Petitioner amended his PCR application. App.57-60. A hearing was held on the matter before the Honorable R. Lawton McIntosh on February 20,2020. Petitioner was represented by Susannah Ross and the State was represented by Jacob Isenburg. App.61.

Counsel said he advised Petitioner to plead guilty. "My advice to Petitioner consistently was these were very difficult cases to try to defend in court in trial." App.100,11.16-18. "What are the odds of successfully defending three drug trafficking cases in a row." App.101,11.5-6. Counsel told Petitioner that a defense of entrapment would be a "long shot." App.102,1. 19-103,1.19. Counsel knew the solicitor was considering "seeking life without parole based on Petitioner's prior convictions." App.94,11.15-17.

Defense counsel admitted and acknowledged that Investigator Ruane had crossed outside his jurisdiction of Spartanburg County to participate in a drug buy. App.115, 11.9-20. Counsel also admitted that Investigator Ruane recorded communications during the entire investigation on April 15,2016. App.116, 11.2-5. Counsel testified that he did not research the law pertaining to the permissible use of recording devices by law enforcement or the permissions for setting up recording devices under SLED and county rules. App.116, 11.2-10.

Petitioner testified that he only pleaded guilty because he believed he did not have any defense at trial. App.84,11.7-8. This testimony was in keeping with Petitioner's answers to the plea judge during the plea colloquy. In response to

questioning by the plea judge, Petitioner said that based on his discussions with counsel, he did not believe he had a defense to the trafficking methamphetamine charge to which he was pleading guilty. App.5,1.22-6,1.1.

Petitioner explained at the PCR hearing that if he had known he could have had a hearing to suppress an audiovisual recording of the alleged drug buy pursuant to the South Carolina Homeland Security Act he would not have pleaded guilty but would have insisted on exercising his right to trial. App.78,1.6-80,1.5.

Specifically, Petitioner explained that Officer Ruane drove Petitioner "around five hours searching for drugs without any kind of prior warrant." App.86,11.23-25. Petitioner also testified that Investigator James Ruane illegally enters into Cherokee County to pick Petitioner up for a drug investigation and acts outside his jurisdiction.....App.78,11.13-21. Further, Petitioner cofirmed that Investigator Ruane was not regulated under SLED or reported to the South Carolina Law Enforcement Division for the investigation. App.76,11.4-13. Officer Ruane's reports were admitted at the PCR hearing and reflected that he made an "audio/video recording" of the incident although, "Due to the length of time of this buy, the transaction was not recorded due to the equipment running out of battery. Investigator Ruane was able to get some of the details of the buy, but not the buy in its entirety." App.121-123. Investigator Ruane's buy notes reflect that he seized oral communications at Petitioner's home at 105 Saddle Drive, Gaffney, South Carolina. App.121-123. Petitioner also explained that

Investigator Ruane's recording was an unlawful interception of oral communications in violation of S.C. Code Ann.§17-30-70. App.77,1.9-18; App.78,1.6-12.

On May 15,2020, the PCR Court issued an order of dismissal. App.145-165. The order of dismissal stated that the "plea hearing transcripts reflects that the Applicant freely and voluntarily pled guilty after recieving a complete and thorough plea colloquy by the plea court." App.156. Applicant stated that he discussed any potential defenses, discovered there were none, and knew he would have to waive defenses when taking the plea." App.156. "It appears Applicant freely and voluntarily chose to plea instead of facing a potential trial sentence of twenty-five to thirty years, and a potential life without the possibility of parole sentence on his other pending charges." App.157. Thus, the court finds Applicant entered his plea freely, voluntarily, knowingly, and intelligently." App.157.

The order of dismissal further stated counsel was not ineffective for failure to investigate. App.157. "Applicant failed to show counsel failed to suppress illegally gathered evidence." App.158. The PCR Court recounted Petitioner's allegation that counsel was ineffective for failing to recognize a defense of the drug transaction that was recorded by Officer Ruane. "Applicant asserts Investigator Ruane's recording of their converstaion while riding in a car to faclitate Applicant's drug purchases is in violation of S.C. Code Section 17-30-70." App.158.

The order of dismissal continued,

> Section 17-30-15 defines wire and oral communications and Section 17-30-20 defines what acts are prohibited. While 18 U.S.C. Section 2519 requires the reporting of the intercept of oral communications and 18 U.S.C. Section 2511 prohibits the intercept of oral communications, 18 U.S.C. Section 2510(2) defines oral communication as "any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation."

App.159.

The order concluded, "No evidence was presented that Applicant had an expectation that his oral communication was not subject to intercept or that the circumstances justified such an expectation. Thus, these communications do not fall under the definition in 2510(2)." App.159. Because the recording of Applicant does not fall under these definitions or the prohibited acts, counsel was not deficient in failing to investigate into an application by the investigator, to make sure a judge entered an order, to advise the court of allegedly illegal actions or investigate a search and seizure issue, because the conduct did not fall under the statute requiring these actions on counsel's part. App.159. "Counsel did not act deficiently in neglecting his duty to investigate and present a defense. App.161. Furthermore, through his free and voluntary guilty plea, Applicant waived any right to claim illegal searches and seizures." App.159.

The PCR Court further ruled that a multi-jurisdictional agreement for law enforcement did not exist. App.164.

Petitioner filed a Writ of habeas corpus on November 1,2021, and amended his petition on January 14,2022. Petitioner raised two claims of ineffective counsel (1) counsel failed to investigate and advise Petitioner that evidence of an audio recording made by Investigator Ruane without a court order could be challenged in a suppression motion. Counsel's failure to advise Petitioner that he could challenge the recording was ineffective assistance rendering the plea involuntary and unknowingly. (2) Counsel's failure to investigate and file a suppression motion pursuant to Spartanburg County Sheriff's Office Investigator James Ruane illegally acting in his official capacity outside his jurisdiction and enters into Cherokee County to participate in a drug buy without a multi-jurisdictional agreement. Petitioner testified that if he had known that Investigator Ruane had acted outside his jurisdiction then Petitioner would not have pleaded guilty but would have exercised his right to trial and had counsel move for a suppression motion or a motion to dismiss.

On May 13,2022, the District Court denied the petition and a certificate of appealability.

The magistrate judge and district court ruled that the PCR Court's application of Strickland was not unreasonable in light of the fact that the PCR Court's determination that plea counsel was not deficient depended largely on the court's interpretation of state law concerning the legality of recording oral communications. The magistrate judge and the district court held that the state court's interpretation of state law is

entitled to the deference; and its not the province of a federal habeas court to reexamine state court determinations on state law questions.

Petitioner filed a Notice of Appeal on May 17,2022. The Fourth Circuit Court of Appeals dismissed the appeal and denied a certificate of appealability on November 29,2022. A petition for rehearing was denied on February 1,2023.

ARGUMENT

Petitioner respectfully request from this Court a certicate of appealability, where Petitioner can make a substantial showing of a denial of a constitutional right of effective assistance of counsel. A habeas petitioner may not appeal the denial of his habeas petition unless the District Court or Court of Appeals "issues a certificate of appealability." Gonzalez v. Thaler,565 U.S. 134,143 n.5,132 S.Ct. 641,181 L.Ed. 2d 619 (2012). Under the (AEDPA), a "COA" may only issue.....only if the applicant has made a substantial showing of a denial of a constitutional right." §2253(c)(2). To make that showing, a habeas petitioner must demonstrate that reasonable jurist could debate whether..... the petition should have been resolved in a different manner or that the issue presented were adequate to deserve encouragement to proceed further. Slack v. McDaniel, 529 U.S. 473,484, 120 S.Ct. 1595,146 L.Ed. 2d 542 (2000). At the COA stage, the only question is whether the claim is reasonably dabatable. Buck v. Davis, 580 U.S. 100,137 S.Ct. 759,197 L.Ed. 2d 1 (2017).

The State PCR Court did make an unreasonable application of Strickland, and an unreasonable factual finding, where the PCR Court ignored the evidence before the court of Investigator Ruane's police report and buy notes for case that showed Officer Ruane unlawfully recorded oral communications outside his jurisdiction of Spartanburg County for a drug investigation, when Ruane illegally seized communications on Petitioner's property at 105 Saddle Drive, Gaffney, South Carolina, without

a court order. see App.121-123, Exhibit 1. The City of Gaffney is 30 miles outside the Spartanburg County line. Here, Investigator Ruane started recording this unlawful audio at 14:24 pm, once Ruane arrived at Petitioner's home at 105 Saddle Drive, Gaffney, South Carolina. see App.121-123; buy notes for case. Further, the PCR Court ruled that a multi-jurisdictional agreement for law enforcement did not exist. App.164.see order of dismissal.

At the PCR hearing, defense counsel admitted and acknowledged that Investigator Ruane had crossed outside his jurisdiction of Spartanburg County to participate in a drug buy. App.115,11.9-20. Counsel also admitted that Investigator Ruane recorded communications during the entire investigation on April 15,2016. App.116,11.2-5. Counsel further testified that he did not investigate the law petaining to the permissible use of recording devices by law enforcement or the permissions for setting up recording devices under SLED and county rules. App.116,11.2-10.

Petitioner testified that if he had known he could have had a hearing to suppress the recording of the alleged drug buy pursuant to the South Carolina Homeland Security Act he would not have pleaded guilty but would have insisted on exercising his right to trial. App.78,1.6-80,1.5.

The State PCR Court ignored or did not consider Officer Ruane's police reports that was Petitioner's probative evidence of a constitutional violation, that showed Ruane seized evidence of a recording outside his jurisdiction of Spartanburg County.

The PCR Court did not mention Ruane's reports in their order of dismissal or did the reports play a role in the outcome of this issue. The PCR Court did not analyze all of the record before the court.

The PCR Court's decision to ignore or overlook Ruane's police reports did undermine the fact finding process, and the omission led to an unreasonable determination of fact because the PCR Court overlooked highly probative evidence or did not consider it. The PCR Court's factual finding is plainly contradicted by the record.

Counsel's failure to research the law pertaining to the use of recording devices by law enforcement for which law enforcement needed a court order to intercept communications, and counsel's failure to advise Petitioner that he could challenge the interception of oral communications in a suppression motion was ineffective assistance of counsel.

The PCR Court did make an unreasonable application of Strickland, and its conclusion was based on an unreasonable factual finding, where it overlooked Petitioner's highly probative evidence of the police reports and testimony.

The magistrate judge and the District Court erred in concluding in its order that the PCR Court's application of Strickland on this claim was not unreasonable in light of the fact that the PCR Court's determination that plea counsel was not deficient depended largely on the court's interpretation of state law concerning the legality of recording oral communications. The magistrate judge and the District Court

held that the state court interpretaion of state law is entitled to the deference; and its not the providence of a federal habeas court to reexamine state court determinations on state law questions. Further, the magistrate judge and the District Court concluded that the PCR Court's decision was not an unreasonable application of Strickland, and the PCR Court's conclusion was not the result of an unreasonable factual finding.

The District Court erred with this conclusion by not addressing the clear and convincing evidence that was submitted to the PCR Court as part of the record before the court of Investigator Ruane's police report and buy notes for case that showed Investigator Ruane unlawfully seized oral communications at Petitioner's home at 105 Saddle Drive, Gaffney, South Carolina, without a court order. App.121-123. Petitioner's home is located 35 miles outside of Officer Ruane's jurisdiction of Spartanburg County, and is located in Cherokee County. Investigator Ruane's unlawful conduct did fall under the prohibited acts in §17-30-20 and U.S.C.A.§2511, where defense counsel was deficient for neglecting his duty to investigate the unlawful seizure of communications and advise Petitioner about suppression of evidence.

The District Court made an error of law and applied the wrong legal standard, where it ruled the state court's interpretation of state law is entitled to the deference here; and its not the providence of a federal habeas court to reexamine state court determinations on state law questions. Petitioner's, Sixth Amendment claim remains cognizable on habeas

whether the underlying suppression motion that counsel failed to make would have been based on federal or state law. Mayo v. Henderson, 13 F.3d 528 (2nd Cir. 1994). Resolution of this issue requires a careful analysis of state law because the adequacy of counsel's performance, and the consequences of any dereliction-that is, the merits of Petitioner's Sixth Amendment claim-depends on the substance of state search and seizure law. Since Petitioner's ineffective assistance of counsel claim depends on the South Carolina Wiretap law, a habeas court must carefully analyze the state law. see Lopez v. Grenier,323 F.Supp. 2d 456,472 (S.D. NY. 2003) (analyzing Fourth Amendment claim underlying federal habeas Petitioner's ineffective assistance of counsel claim in terms of state law). The claim whose omission forms the basis of an ineffective assistance claim may be federal or a state law claim, so long as the failure to raise the state.. ....claim fell outside the wide range of professionally competent assistance.

The District Court's dispositive ruling and denial of a certificate of appealability was an error of law. Petitioner has demonstrated that reasonable jurist could debate whether the petition should have been resolved in a different manner or the issue presented were adequate to deserve encouragement to proceed. Here, reasonable jurist could debate whether defense counsel rendered ineffective assistance for failing to investigate and advise Petitioner that he could challenge the intercepted communications that Investigator Ruane seized outside his jurisdiction of Spartanburg County in a suppression motion.

The Fourth Circuit Court of Appeals erred where it affirmed the district court's decision to deny the petition and a COA. The correct legal standard was not applied by the district court, where it ruled the State PCR Court's interpretation of state law is entitled to the deference; and its not the providence of a federal habeas court to reexamine state court determinations on state law questions.

Claims of ineffective assistance of counsel can be premised on attorney's failure to raise state law issues, federal habeas courts reviewing such claims must defer to state-court precedent concerning question of state law underlying defendant's ineffective claim. The Court of Appeals and the district court did not defer to the state-court precedent concerning question of state law on Petitioner's ineffective assistance of counsel claim for failure to advise Petitioner about suppression of evidence.

In the context of a Fourth Amendment or a cognate state law claim, Strickland requires an analysis of the merits of the suppression motion, if the motion would have prevailed, the Court must ask whether "the verdict would have been different absent the excludable evidence. Kimmelman, 477 U.S. at 375.

The Petitioner did have a right to privacy at his home at 105 Saddle Drive, Gaffney, South Carolina, and Investigator Ruane needed to apply for a court order to seize communications on Petitioner's property for which is located 35 miles outside of Officer Ruane's jurisdiction of Spartanburg County, and is located in Cherokee County. Defense counsel was ineffective

for failing to research and advise Petitioner about a suppression motion.

The Fourth Circuit and the district court made an error of law with the question of state law conclusion because regardless of state or federal law it does not matter as long as Petitioner's claim can show ineffective assistance of counsel under the Strickland test.

The Fourth Circuit should have granted Petitioner a certificate of appealability because reasonable jurist could debate whether defense counsel rendered ineffective assistance for failing to research and advise Petitioner that he could challenge the recording that Investigator Ruane unlawfully seized outside his jurisdiction of Spartanburg County in a suppression motion.

If plea bargaining is to be constitutionally acceptable, it must rest upon personal choices made by defendants informed about possible alternatives; at least, they should know what options are open to them. The failure of an attorney to inform his client of the relevant law clearly satisfies the first prong of the Strickland analysis, as such omission cannot be said to fall within "the wide range of professionally competent assistance" demanded by the Sixth Amendment. Hill, 474 U.S. at 62,106 S.Ct. at 372; Strickland v. Washington, 466 U.S. 668, 690, 104 S.Ct. 2052,2066, 80 L.Ed. 2d 674 (1984).

For a guilty plea to represent an informed choice so that it is constitutionally knowing and voluntary, the counsel must be familiar with the facts and law in order to advise the

defendant of the options available. A defendant cannot knowingly and voluntarily plead guilty unless he possesses an understanding of the law in relation to the facts, which includes available defenses. Furthermore, a guilty plea can be involuntary if the defendant was not informed by his lawyer of his defenses to the criminal charge. U.S. v. Mooney, 4th Cir. 497 F.3d 397 (2007). Before pleading guilty a defendant should be made aware of possible defenses, at least, where the defendant makes known facts that might form the basis of such defenses. Thundershield v. Solem, 565 F.2d 1081,1028 (9th Cir. 1977). A guilty plea must represent a voluntary and intelligent choice amoung the alternative courses of action open to a defendant. North Carolina v. Alford, 400 U.S. 25,31, 91 S.Ct. 160,164, 27 L.Ed. 2d 162 (1970). The assistance of counsel received by a defendant is relevant to the question of whether a defendant's guilty plea was knowingly and intelligent issofar as it affects the defendant's knowledge and understanding. McMann v. Richardson, 397 U.S. 759,770-71, 90 S.Ct. 1441,1448-49 (1970).

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 quintessential example of unreasonable performance under Strickland. see Hinton v. Alabama, 571 U.S. 263,134 S.Ct. 1081,188 L.Ed. 2d 1 (2014); also see Williams v. Taylor,529 U.S. 362,395,120 S.Ct. 1495,146 L.Ed. 2d 389 (2000) (finding deficient performance where counsel failed to conduct an investigation that would have uncovered extensive records that could be used for death penalty purposes, and not

because of any strategic calculation but because they incorrectly thought the state law barred access to such records.)

S.C. Code Ann.§17-30-70 provides: An application for an order authorizing or approving the interception of wire, oral, or electronic communications must be initiated by the Chief of SLED. After reviewing the application, the Attorney General or his designated Attorney General may authorize the submission of the application to a judge of competent jurisdiction for, and the judge may grant in conformity with this chapter, an order authorizing or approving the interception of wire, oral, or electronic communications by [SLED].....or an individual operating under a contract with [SLED] for the investigation of certain criminal offenses such as drug trafficking as defined in Sections 44-53-370 (e) and Section 44-53-375 (c);.....

Petitioner was charged with violating S.C. Code Ann.§44-53-375 (c), which puts the intercept in this case within the ambit of §17-30-70 (A)(1).

The State Wiretap Act parallels the Federal Act passed by congress in 1968.....As the PCR Court's order of dismissal recognized here, the federal equivalent to our state's definitional provision of the Act, 18 U.S.C.A.§ 2510 (2), "oral communication" almost identical to S.C. Code Ann.§ 17-30-15 (2). Therefore, federal cases interpreting the definition of "oral communication" under the Federal Act are useful in interpreting the definition under the State Act.

In the case of Katz v. United States, 389 U.S. 347 (1967), this Court held it was unconstitutional under the Fourth

Amendment to conduct a search and seizure without a warrant anywhere that a person has a reasonable expectation of privacy, unless certain exceptions apply. The Court concluded that the application of the Fourth Amendment depends on whether the person invoking its protections can claim a justifiable, a reasonable or a legitimate expectation of privacy that has been invaded by goverment action. This inquiry normally embraces two discrete questions. The first is whether the individual, by his conduct, has exhibited an actual (subjective) expectation of privacy. 389 U.S. at 361 [88 S.Ct. at 516]-whether the individual has shown that he seeks to preserve something as private. Id. at 351 [88 S.Ct. at 511]-The second question is whether the individual's subjective expectation of privacy is one that society is prepaired to recognize as reasonable. Id. at 361 [88 S.Ct. at 516] Whether the individual's expectation viewed objectively, is justifiable under the circumstance. Here, Petitioner did have a right to privacy at his residence at 105 Saddle Drive, Gaffney, South Carolina. Investigator Ruane illegally recorded oral communications outside his jurisdiction of Spartanburg County for a drug investigation, when Ruane unlawfully seized this recording on Petitioner's property for which is located 35 miles outside the Spartanburg County line, and is located in Cherokee County.

S.C. Code Ann.§17-30-110 and 18 U.S.C.A.§ 2518 (10)(a) provides, in relevant part of statutes, that "any aggrieved person may move to suppress the contents of any intercepted wire, oral, or electronic communication, or evidence derived

therefrom, on the grounds that the :(1) communication was unlawfully intercepted....."

Both "Wiretap Acts" are violated when a person intercepts oral communications that are not otherwise exempt from or subject to an exception contained in the consensual monitoring statutes in S.C. Code Ann.§17-30-30(B) and 18 U.S.C.A.§2511 (2)(c). Evidence intercepted in violation of the Wiretap Act must be suppressed. U.S. v. Giordano, 94 S.Ct. 1820 (1974).

In the context of an alleged failure to make an appropriate suppression motion regarding a Fourth Amendment claim, Strickland requires that a defendant show that:(1) a competent attorney would have made the motion;(2) the suppression motion would have been successful;(3) the outcome of the proceeding would have been different absent the excludable evidence. Kimmelman, 477 U.S. at 375.

In Kimmelman v. Morrison, 477 U.S. 365,384-85, 106 S.Ct. 2574,91 L.Ed. 2d 305 (1986) (stating that "where trial counsel fails to make a motion to suppress because he neglected to make reasonable investigations or make a reasonable decision that makes particular investigations unnecessary then ineffective representation is shown".))

All evidence gathered by Investigator Ruane should have been challenged in a suppression motion because its in violation of the South Carolina Wiretap Act and "Fruit of the Poisonous Tree". Evidence qualifies as "Fruit of the Poisonous Tree" when the illegal search under the Fourth Amendment tends to significantly direct the investigation to the evidence in

question.

Petitioner provided the PCR Court and the habeas courts with clear and convincing evidence of Investigator Ruane's police report and buy notes that showed Ruane unlawfully seized evidence of a recording outside his jurisdiction of Spartanburg County. App.121-123. A police officer has no authority to act under color of law and seize evidence outside their jurisdiction without a warrant or an authorized jurisdictional agreement for law enforcement.

To establish prejudice when challenging a guilty plea, Petitioner must prove "there is a reasonable probability that but for, counsel's errors, the defendant would not have pleaded guilty, but would have gone to trial. The crux of the inquiry is whether counsel's performance affected the outcome of the plea process, not whether the defendant would have been successful had he gone to trial. Petitioner testified had he known he could move to suppress the recording made by Ruane, he would not have pleaded guilty but would have insisted upon exercising his right to trial. Petitioner's guilty plea was involuntary and unknowingly entered into, where defense counsel failed to recognize and advise Petitioner that evidence in the case could be challenged in a suppression motion pursuant to the South Carolina Wiretap Act.

The South Carolina Wiretap Act provided a legitimate way in which to challenge critical evidence against Petitioner, and counsel was unaware of this avenue of challenge. Thus, counsel rendered ineffective assistance in failing to research

and advise Petitioner about suppression of evidence. Strickland v. Washington, 466 U.S. 686.

Reasonable jurist could debate whether Petitioner's habeas petition should have been resolved in a different manner and this Court should grant a certificate of appealability.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully request the Court to grant the writ of certiorari and a certificate of appealability.

Respectfully submitted,

S/ Shannon Lancaster

Date: 4-10-23

Exhibit 1

LANCASTER, SHANNON M - Suspect

DOB	04/08/1974	**Race**	W-WHITE, NON-HISPANIC
Sex	M	**Ethnicity**	Non-Hispanic
Height	6'00"	**Weight**	175
Address	304 OLD DIRT RD; OLD DIRT RD	**City**	SPARTANBURG
State	SC	**Zip**	29307
Phone	(864)621-2376	**DL State**	South Carolina
DL Number	7376763		

NARCOTICS - Complainant

DOB		**Race**	
Sex		**Ethnicity**	
Height	6'00"	**Weight**	180
Address	8045 HOWARD ST	**City**	SPARTANBURG
State	SC	**Zip**	29303
Phone	(864)503-4500	**DL State**	
DL Number			

Property

Drug - Evidence

Quantity	27.6	**Total Value**	$1.00
Measurement	Gram	**Amount Recovered**	$0.00
IBR / UCR Code	Drug/Narc, Amphet or Methamphe	**Date Recovered**	04/15/2016
Status	Seized	**Owner**	

Narratives

Original Narrative - Ruane, James - 04/18/2016 13:26:26

On April 15, 2016 Investigator Ruane, acting in a undercover capacity contacted Shannon Lancaster in reference to purchasing an ounce of methamphetamine. Shannon Lancaster stated to Investigator Ruane to pick him up, and take him (Lancaster) to go get the methamphetamine. Investigator Ruane had $1,250.00 of recorded Sheriff's Office Funds and an audio/video recording device. Investigator Ruane driving an uncover Spartanburg County vehicle was followed by other Investigators to pick up Shannon Lancaster. Once Investigator Ruane picked up Shannon Lancaster, he (Lancaster) told Investigator Ruane that he (Lancaster) had to go to Wellford for the methamphetamine. Investigator Ruane, followed by other Investigators, drove Shannon Lancaster to the buy location located at 112 Wild Oaks Drive, Wellford, SC. Investigator Ruane handed the recorded Sheriff's Office Funds to Shannon Lancaster who then exited the vehicle and walked inside the trailer. A short time later, Shannon Lancaster walked back to the vehicle and handed Investigator Ruane a plastic bag containing a pink crystal like substance. Investigator Ruane left and met with Investigators at a predetermined location. The pink crystal like substance weighed approximately 27.6 grams and did field test positive for methamphetamine. The pink crystal like was placed into Best Bag #S153095 and placed into evidence at the Sheriff's Office for further testing. The audio/video recording was transferred to a DVD for storage and still photo's were made for this case file.

This incident happened within 1/2 mile of Wellford Academy located at 684 Syphrit Road, Wellford, SC 29385.

Judge Blackley issued the following warrants on Shannon Lancaster:2016A4210201358 PWID 1/2 Mile of School, 2016A4210201359 Trafficking Meth 2nd.