No. 23-5388

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Clifton Donell Lyles — PETITIONER
(Your Name)

vs.

State of South Carolina — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The South Carolina Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Clifton Donell Lyles
(Your Name)

Post Office Box 580
(Address)

Una, South Carolina 29378
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

DOES McHAM V. STATE, 404 S.C. 465, 746 S.E.2d 41 (2013), REQUIRE THAT PETITIONER BE ALLOWED TO FILE A SUBSEQUENT PCR APPLICATION?

12 pages

LIST OF PARTIES

[x] 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 the proceedings in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

State v. Lyles,2008 WL19841484(S.C.App.April 11,2008)

State v. Lyles,381 S.C. 442,673 S.E.2d 811(2009)

Lyles v. Reynolds,2016 WL1427324 U.S.Dist.Ct. for the District of South Carolina. Judgment entered April 12,2016.

Lyles v. Reynolds,2016 WL1445091 U.S.Dist.Ct. for the District of South Carolina. Judgment entered on January 28,2016.

Lyles v. Reynolds,2016 WL1211693 U.S.Dist.Ct. For the District of South Carolina. Judgment entered on March 29,2016.

Lyles v. Reynolds,2016 WL4527529 Fourth Circuit Court of Appeals Judgment entered on August 30,2016.

Lyles v. Dunlap,2017 WL846420 United States Supreme Court. Judgment entered on April 3,2017.

In Re Lyles,2021 WL3784253 Fourth Circuit Court of Appeals. Judgment entered on August 26,2021.

Lyles v. Reynolds,2021 WL4859574 Fourth Circuit Court of Appeals. Judgment entered on August 19,2021.

Lyles v. Reynolds,2022 WL228868 Fourth Circuit Court of Appeals. Judgment entered on January 25,2022.

In The Matter of Clifton Lyles No.2023-000812 South Carolina Supreme Court. Judgment entered on June 8,2023.

In The Matter of Clifton D. Lyles App.No.2022-000164 South Carolina Supreme Court. Judgment entered on March 15,2022.

Lyles v. State,App.No.2020-000082 South Carolina Supreme Court. Judgement entered on Septemeber 21,2020.

Petition of Clifton Lyles,App.No.2022-000535 South Carolina Supreme Court. Judgment entered on June 8,2022.

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OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

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

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

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

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

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

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

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; 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 _____.

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

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

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

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

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

The date on which the highest state court decided my case was June 8, 2023. A copy of that decision appears at Appendix A.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

XIV AMENDMENT:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On July 12,2019, Petitioner received a letter from the South Carolina Sureme Court informing him of the following:

"Since you have filed multiple post-conviction relief applications challenging the underlying criminal conviction(s), along with several federal and state habeas corpus actions, the Court , if it determines that you have failed to provide an adequate explanation under Rule 243(c),SCACR, may decide to prohibit you from filing a post-conviction relief application,habeas corpus action or any other action, motion or petition in the circuit court challenging this conviction(s) and sentence(s) (including a motion under Rule 29 of the South Carolina Rules of Criminal Procedure) without first obtaining the permission of this Court to do so. If you believe that there is some reason(s) why such a prohibition should not be imposed on future filings by you in the circuit court, those reasons should be provided within twenty (20) days of the date of this letter."see Letter Order dated July 12,2019.

In August 2019, Petitioner sent in his response stating the following: "Petitioner contends that he should not be restricted from any future filings based on the amount of pcr applications he has filed. His first application was filed simply as required by the South Carolina appellate process. The second application was filed at the direction of former Chief Justice Jean Toal to correct my loss of right to appeal my first pcr.see Order Dismissing Notice of Appeal Dated 6-17-2010 (Exhibit E). Th

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third application was filed looking to comply with this court's order dismissing the first state habeas corpus dated 7-18-16, citing Simpson v. State,supra, and the second state habeas corpus action(2017-001280), dated 6-14-17, citing Key v. Currie,305 S.C. 115,406 S.E.2d 356(1991), that this matter could be handled in the lower courts. Petitioner contends that because the first two pcr applications were proper, and that this third application is only seeking the correction of a highly prejudicial procedural error that was not addressed in the second pcr application, that he should not be punished for seeking his one full and fair pcr process."see Petition For Rehearing Dated October 8,2019.

On October 31,2019, the South Carolina Supreme Court issued an Order stating the following: "By Order dated September 19,2019, we dismissed Petitioners appeal and prohibited Petitioner from filing further collateral actions without permission to do so from this court. Petitioner has filed a petition for rehearing. The petition is denied."

On May 18,2023, Petitioner filed a "Motion requesting Permission To File A Subsequent Post-Conviction relief Application" in the South Carolina Supreme Court. In the Motion Petitioner alleged that he should be allowed to file a subsequent post-conviction relief application due to an unfair first pcr process due to the pcr court's refusal to adjudicate the search warrant claim because he erroneously believed that the claim was reviewed during the Anders v. California,386 U.S. 738,87 S.Ct.

1396(1967) process on direct appeal.see PCR Transcript(Tr.)Page(pg.)43LIne(L)19Through(-)pg.45L.2.=(Tr.pg.43L.6-pg.45L2).

Petitioner alleged that the Search Warrant claim was not reviewed during the Anders process because it was not properly preserved for appellate review due to his trial counsel's failure to get a final ruling on the motion, and failure to object when the drugs were admitted into evidence.see Tr.pg.355L.1-13.

At trial, defense counsel filed motions in limine to supress the search warrant evidence and to reveal the Confidential Informant's identity.Tr.pg.40L.21-22. The trial judge initially denied the motion,Tr.pg.64L.13-pg.65L.7, but later Ordered that ruling be held in abeyance and its finality to be determined by his ultimate ruling on the motion to reveal the identity of the confidential informant,Tr.pg.75L.19-pg.76L.10;pg.77L.23-25. The trial judge failed to come back and make a final ruling on either motion.Tr.pg.368L.19-pg.371L.14;pg.408L.3-9. During trial, when the drugs were being admitted into evidence, the trial judge specifically asked if trial counsel had any objections, and trial counsel stated "No objections your honor".Tr.pg.355L.1-13.

In South Carolina, making a motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a motion in limine is not a final determination.see State v. Forrester,343 S.C. 637,541 S.E.2d 837(2001). The moving party, therefore, must make a contemporaneous objection when the evidence is introduced.see

State v. Simpson,325 S.C. 37,479 S.E.2d 57(1996). Unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review.see State v. Atieh,397 S.C. 641,646,725 S.E.2d 730,733(Ct.App.2012).

The South Carolina Supreme Court held the same in State v. Mcham,404 S.C. 465,746 S.E.2d 41(2013). There, the court reversed a pcr judge's order and held that, "...in a post-conviction relief action following dismissal of an Anders appeal from trial in which trial counsel moved in an in limine motion to suppress drugs as the product of an illegal search and seizure in violation of the Fourth Amendment, but failed to renew the objection on that basis when the drugs were actually admitted into evidence at trial, it was clear the Court of Appeals did not consider the merits of the Fourth Amendment issue on direct appeal because it was not preserved by trial counsel."Id.404 S.C. 465,47,473-75,746 S.E.2d 41,44,46-47(2013).

As a remedy for those whom raised claims in the Anders process but were not preserved, they were required to file those claims in the pcr process.see Jamison v. State,410 S.C. 456,765 S.E.2d 123(2014)(Noting issues raised on direct appeal and found to be unpreserved may be the subject of a subsequent pcr claim). Petitioner was not afforded that right as his pcr judge did not understand the Lyles ruling holding that the dismissal of an Anders brief was not a ruling on the merits. He therefore would not adjudicate the search warrant claim. Instead, ruling that it was procedurally barred under S.C.Code§17-27-20(B)(2003).

Petitioner kept trying to explain to the pcr judge that the

new ruling in his direct appeal in State v. Lyles,381 S.C. 442,673 S.E.2d 811(2009), specifically states that the merits of the claim was not considered in the Anders process. The PCR judge refruted Petitioner and continued to argue that the claim was reviewed during the Anders review.see PCR Tr.pg.43L.6-pg.45L.2. The pcr judge was in error for failing to adjudicate the claim. Petitioner could not utilize the Rule 59(e),SCRCP, to petition him to alter or amend his judgment because his pcr counsel purposely abandoned him by allowing the time to motion the judge and to appeal to expire. The belated Austin v. State,305 S.C. 453,409 S.E.2d 395(1991), appeal does not provide a remedy for the lost usage of the civil court rules. Thus the reason for Petitioner's filing of the third pcr application and both state habeas corpus applications.

Petitioner contends that the South Carolina Supreme Court's refusal to allow him to file a subsequent pcr application in compliance with its ruling in McHam v. State,404 S.C. 465,746 S.E.2d 41(2013), violates the Fourteenth Amendment's bar against unequality and due process of law.U.S.C.A.Const.AMend.XIV: "All persons born or naturalized in the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Petitioner should be allowed to file a subsequent Post-Conviction Relief Application.

REASONS FOR GRANTING THE PETITION

This petition should be granted in order to settle several years of procedural issues in the South Carolina Supreme Court's modification of the Anders procedure. A modification that has affected several different aspects of the appellate process such as, the **depth of review** for claims,Williams v. Reynolds,2017 WL2483923; **preservation of claims**,McHam v. State,404 S.C. 465,746 S.E.2d 41(2013); **Exhaustion of claims** for federal review,Mouzon v.Warden BroadRiver Correctional Inst.,2010 WL143064;Whitt v. McCall,2010 WL1027626;Reddock v. Ozmit,2010 WL568870;Lyles V. Reynolds,2016 WL1445091;Sims v. Padula,2012 WL5457390;Coker v. Warden,Lee Correctional Inst.,2012 WL3096031;White v. Warden of Lee Correctional Institution,2011 WL13224885;Stewart v. Warden of Leiber CorrectionalInst.,701 F.Supp.785(D.S.C.);Porterfield v. Cartledge,2017 WL5441854;Evans v. Warden Lieber Corrctional Inst. ,2018 WL3520847;**Statute of Limitations**,Heydman v. Williams,2021 WL4785821;Wilson v. Bush,2017 WL6628173;Bradwell v. Reynolds,2013 WL172948;McElrath v. Warden,McCormick Correction Institution,2018 WL2344629;Bostic v. Reynolds2015 WL646146;etc.

The problem stems from an post facto rule modification by the South Carolina Supreme Court in State v. Lyles,381 S.C. 442,673 S.E.2d 811(2009), concerning a new policy standing on seeking certiorari review after the Court of Appeals has dismissed an appeal pursuant to an Anders procedure, and whether that dismissal is considered as a ruling on the merits of the appeal.

Petitioner was convicted of trafficking in crack cocaine. He was sentenced to thirty years and payment of a $50,000 fine.

After an Anders review, the Court of Appeals dismissed Petitioner 's direct appeal.State v. Lyles,Op.No.2008-UP-223(S.C.Ct.App.filed April 11,2008). Petitioner then filed a pro se petition for a writ of certiorari to review the decision of the Court of Appeals. The South Carolina Supreme Court denied the petition and held that, "as a matter of policy, we will not entertain petitions for writ of certiorari to the Court of Appeals where the Court of Appeals has conducted an Anders review'..."Under this procedure, a decision of the Court of Appeals dismissing an appeal after conducting a review pursuant to Anders is not a decision on the merits of the appeal, but simply reflects that the appellate court was unable to ascertain a non-frivolous issue which would require counsel to file a merits brief".see Lyles v. State,381 S.C. 442,673 S.E.2d 811(2009).

That ruling led to mass confusion throughout the courts of South Carolina. States' Attorneys argued that based on the new ruling in Lyles, that the dismissal of an Anders brief, or denial of a petition for writ of certiorari based on a Johnson petition, does not satisfy the exhaustion requirement because the appellate court does not consider the merits of the issues raised under these procedures.see McCoy v. Cartledge,2010 WL680258;Ehrhardt v. Cartledge,2009 WL2366095;Stewart v. Warden of Lieber Correctional Inst.,701 F.Supp.2d 785(D.S.C.2010).

The federal district courts disagreed with the States' attorneys attempt to apply Lyles in that manner. They reasoned

that, "were the court to accept the Respondent's argument, any claim presented by an inmate that was (1) raised and ruled on by the PCR court and (2) fairly presented to the state appellate court in a Johnson petition (or response) would nonetheless be barred from federal habeas review if the state appellate court denied discretionary review...since there appears to be no clear controlling precedent on this issue, out of an abundance of caution the undersigned will consider the merits of the claims.see Singleton v. Eagleton,2009 WL2252272;Goins v. Stevenson,08-3916-RBH,2010 WL922774(D.S.C.March 9,2010);Mouzon v. Warden,09-2253-RBH,2010 WL143464(D.S.C.March 5,2010);Missouri v. Beckwith,2878-SB,2009 WL3233521(D.S.C.Sept.29,2009);Ehrhardt v. Cartledge,08-2266-CMC,2009 WL2366095(D.S.C.July 30,2009).

Some district court judges attempted to manufactor an analogy to explain why the South Carolina Supreme Court's ruling did not mean exactly what it said. In Lyles v. Reynolds,2016 WL1211693, in the court's reasoning of why Petitioner's Search Warrant claim did receive review on the merits during the Anders procedure on direct appeal, it stated the following:

In its decision on direct appeal in the instant case, the South Carolina Supreme Court noted that an Anders dismissal is "not a decision on the merits".State v. Lyles,673 S.E.2d 811,813(S.C.2009). However, it is clear that the court used this phrase in the sense that an Anders dismissal does not involve a hard look by the Appellate court with full briefing as to whether the appellant should ultimately win or lose.see Lyles,673 S.E.2d at 813(holding that an Anders dismissal "simply reflects that the

appellate court was unable to determine a non-frivolous issue which would require counsel to file a merits brief"). Rather, it is more in the nature of a summary dismissal-a commentary-that the appeal is not worthy of review by the appellate, court. It is not a rejection due to the litigant's "procedural missteps" or failure to comply with state procedure rules or law. The failure to raise a non-frivolous or meritorious issue is not a procedural deficiency within the contemplation of Coleman. Moreover, it is well settled that when the last state court to review an issue summarily disposes of the claim-for example through the denial of certiorari-the federal habeas court may look through the denial to the last reasoned decision.see Yist v. Nunnemaker,501 U.S. 797,803,804,111 S.Ct. 2590,115 L.Ed.2d 706(1991)...".also see McCoy v. Cartledge,2010 WL680258.

That analogy was clearly rejected as a whole by the South Carolina Supreme Court by its ruling in McHam v. State,404 S.C. 465,746 S.E.2d 41(2013). There, faced with the question of "whether McHam's trial attorney was ineffective for failure to preserve the Fourth Amendment search warrant claim at trial, due to his failure to object when the drugs was being admitted into evidence, the pcr judge denied the claim. He stated that, "it appeared the Court of Appeals had reviewed the suppression issue submitted by McHam on direct appeal and the dismissal of the appeal appears to be on the merits rather than a failure to preserve as suggested by McHam".Id.

The South Carolina Supreme Court reversed the pcr judge's order and held that, "Under the "Anders procedure", an appellate

court is required to review the entire record of a case, including the complete trial transcript, for any preserved issues with merit"..."Based on the forgoing, it is clear the Court of Appeals did not consider the merits of the Fourth Amendment issue because it was not preserved by trial counsel. To the extent the pcr judge concluded otherwise and based his findings of a lack of prejudice on this conclusion, he was in error".Id;also see Jamison v. State,410 S.C. 456,765 S.E.2d 123(2014).

While there continues to be other unsettled points of law concerning review during an Anders or Johnson procedure here in South Carolina, Frady v. Warden,Perry Correctional Institution,2022 WL4227407,McGee v. Warden of Lieber Correctional Institution,2022 WL5434349;Dickerson v. Stephan,2021 WL4177239, Petitioner's problems are at this particular point.

Even though his constitutional errors includes those of McHam's, where his trial counsel failed to preserve his fourth amendment search warrant claim at trial by failing to object when the drug evidence was admitted at trial,Tr.pg.355L.1-13, and he did not receive appellate review through the Anders or pcr process, the South Carolina courts, both state and federal, are refusing to allow him to file a subsequent pcr or federal habeas corpus.see Lyles v. Reynolds,2022 WL228868;Lyles v. Reynolds,2021 WL4859574;In re Lyles,2021 WL3784253;In The Matter of Clifton Lyles,No.2023-000812(6-8-2023);In The Matter of Clifton D. Lyles,App.No.2022-000164(S.C.S.Ct.3-15-2022);Lyles v. State,App.No.2020-000082(S.C.S.Ct.9-21-2020);Petition of Clifton Lyles,App.No.2022-000536(S.C.S.Ct.6-8-22).

Peitioner contends that the South Carolina judicial system as

a whole, is reflecting the words of its current Chief Justice, in a 2013 speech at a Solicitor's convention. There, he said, "...we have done everything in the playbook to protect your (Solicitors) convictions. Including turning a blind eye".see December 14,2013 Article "Hit Dogs Holler" by South Carolina's Defense Attorneys. It is Petitioner's belief that the State Supreme Court used the modification of Petitioner's case as a means to assist in "turning a blind eye" via the Anders process where it adopted a self limitation mechanism crafted by the state Court of Appeals limiting its review of claims in the Anders process to **"preserved claims only"**.see McHam v. State,404 S.C. 465,746 S.E.2d 41(2013)quoting State v. Lawrence,349 S.C. 129,130,561 S.E.2d 633,634(2003);Foye v. State,335 S.C. 586,518 S.E.2d 265(1999). The state Supreme Court modified its policy for seeking certiorari review after the Court of Appeals has denied an Anders brief. This allowed the court a means to avert its eyes and avoid responsibility of correcting constitutional errors.

What's more, is the Court of Appeals usage of the phrase, "After a thorough review of the record, counsel's brief,and Lyles' pro se brief pursuant to Anders v. California,386 U.S. 738(1967), and State v. Williams,305 S.C. 116,406 S.E.2d 357(1991)", is no more than another means to mislead any reviewing court that the entire record was searched for meritorious claims when in reality it limits its search to preserved claims only. This can be seen in Petitioner's case concerning the Fourth Amendment Search Warrant claim. Butfore

this limited review, Petitioner's case would have come out differently based on the following:

During the pretrial hearing on the Search Warrant, the state presented the Affiant, Officer Ligon, as its sole witness.Tr.pg.42L.1-pg.45L.25. Officer Ligon testified that the confidential informant was fitted with an electronic listening device, given governmental funds, which he then used to purchase crack cocaine from petitioner, which was then retrieved from the informant.Tr.pg.44L.11-pg.45L.2. That information was then used to acquire a search warrant.Tr.pg.43L.11-pg.45L.21. Petitioner was not allowed to know the identity of the confidential informant whom was the sole witness to the alleged controlled buy. Was not allowed to see the alleged evidence retrieved from the alleged confidential informant. Nor was defense counsel allowed to question the Affiant about the alleged confidential informant.Tr.pg.49L.21-pg.50L.2.

Those were clear violations of Petitioner's Sixth Amendment rights to confrontation and compulsion,Roviaro v. United States,353 U.S. 53,77 S.Ct. 623(1957);Crawford v. Washington,541 U.S. 36(2004), as well as the Fourteenth Amendments right to due process and equal protection. Butfore those constitutional violations, the search warrant hearing would have come out differently based on the drug evidence would have been required to be suppressed based on a lack of probable cause do to the following:

While the Affiant alleged in his affidavit that a controlled buy took place, he has yet to produce one shred of evidence to

corroborate that allegation. No drugs, tape recordings, governmental funds, confidential informanmt, nor were charges filed against Petitioner for that alleged offense. No court has ever seen or asked to see any of that alleged evidence. **Not even the magistrate that issued the search warrant.**Tr.pg.49L.21-pg.50L.2.

The affidavit was devoid of any residual evidence of a controlled buy such as: 1.How the Affiant know the Confidential informant; 2.How the informant knows Petitioner; 3.Where the Affiant met up with the informant to wire him up; 4.whether he searched the informant before he went to the residence; 5.The amount of governmental funds given to the informant; 6.How the informant was transported to the residence; 7.What time the buy took place; 8.Did he see the informant enter the residence; 9.Where did he meet up with the informant to retrieve the evidence; 10.Did he search the informant after retrieving the drug evidence; 11.Did he field test the evidence; 12.What was the weight of the drugs;etc.

What's more, is that the affidavit lacked any information concerning the informant's basis of knowledge, reliability and veracity. Based on that information coupled with the aforementioned points, the magistrate simply acted as a rubber stamp.U.S. v. Perez,393 F.3d 457(4th.Cir.2004).

Based on the above mentioned facts, it is clear that Petitioner did not receive any appellate review of the Fourth Amendment Search Warrant claim through the Trial, Anders

Procedure, state post-conviction relief proceeding or federal habeas corpus review. Therefore, Justice requires that this Honorable United States Supreme Court exercise its original jurisdiction an rule on this matter for **ALL** of those being wronged through South Carolina's "turning of a blind eye" through its ex post facto modification of the Anders procedure.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Clifton Donell Lyles

Date: August 9,2023