

No. 23-5388

IN THE

SUPREME COURT OF THE UNITED STATES

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CLIFTON DONELL LYLES-PETITIONER

VS.

STATE OF SOUTH CAROLINA-RESPONDENTS

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MOTION FOR REHEARING

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GROUNDS

This Honorable Supreme Court has failed to take notice that South Carolina's procedural rules for the Anders process, does not allow appellate review of **unpreserved meritorious** claims on direct appeal, McHam v. State, 404 S.C. 465, 746 S.E.2d 41 (S.C. 2013), which does not hold to this court's pronouncement that a full examination of all the proceedings be done and that the appeal be found to be wholly frivolous before allowing counsel to withdraw. see Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

RELEVANT FACTS

Under the Anders procedure in South Carolina, an appellate court is required to review the entire record of a case, including the complete trial transcript, for any **preserved** issues with potential merit. McHam v. State, 404 S.C. 465, 746 S.E.2d 41 (2013). Issues raised on direct appeal and found to be

**unpreserved** may be the subject of a subsequent PCR claim. Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (S.C. 2014).

#### ARGUMENT

The due process clause of the Fourteenth Amendment requires states to offer each defendant a fair opportunity to obtain an adjudication on the merits of his appeal. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Petitioner has not been afforded a fair opportunity to obtain an adjudication on the merits of his Fourth Amendment claims due to the South Carolina Supreme Court's failure to adequately explain its rule modification at the time of its pronouncement. State v. Lyles, 381 S.C. 442, 673 S.E.2d 811 (S.C. 2009).

That failure left the state and federal courts confused as to whether claims raised in the Anders process received appellate review and could not be reviewed for a second time in a post-conviction relief or federal habeas corpus process. Both courts concluded that claims raised during the Anders process was reviewed on the merits during the Anders process and could not be reviewed for a second time. see (2009-cp-46-1759) State Post-Conviction Relief Order of Dismissal, Dated February 26, 2010, and Lyles v. Reynolds, 2016 WL1211693.

The equal protection clause of the Fourteenth Amendment requires that an indigent defendant be given an adequate opportunity to present his claims fairly in the context of the state's appellate process. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990 (1987). Petitioner is not being allowed a fair and adequate opportunity to present his claims in South

Carolina's appellate process being that he is not being allowed to access the state post conviction relief process to address his unpreserved meritorious claims as proscribed in McHam v. State, 404 S.C. 465, 746 S.E.2d 41 (2013).

Petitioner's procedural circumstances falls in lock step with the procedural mishaps the South Carolina Supreme Court reasoned was the basis for allowing McHam and others to raise their unpreserved Anders claims in a second or subsequent PCR process. see Jamison v. State, 410 S.C. 456, 765 S.E.2d 123 (S.C. 2014). Petitioner's trial counsel too failed to preserve his Fourth Amendment Search Warrant claims for appellate review on direct appeal, by failing to object to the drug evidence on fourth amendment grounds at the time it was entered into evidence. see Trial Transcript page 355 Line 1-13. Therefore, due process and equal protection requires that he receive the same opportunities and protections as those similarly situated as he.

CONCLUSION

The motion for rehearing should be granted.

This 19 day of November 2023,

BY: John D. Bell Jr. 294075  
PRO SE  
POST OFFICE BOX 580  
UNA, SOUTH CAROLINA 29378

CERTIFICATE OF PETITIONER

— Petitioner contends that this Motion For Rehearing is restricted to controlling effects and substantial grounds not previously presented. This petition for rehearing is presented in good faith and not for delay.

This 19 day of November 2023,

BY: Jeffrey D. Dyer 294075.  
PRO SE  
POST OFFICE BOX 580  
UNA, SOUTH CAROLINA 29378