

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal From Spartanburg County  
Court of Common Pleas  
Hon. R. Keith Kelly, Presiding  
C/A No. 2020-CP-42-01182

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REGINALD BYRD -- PETITIONER,

-VS-

STATE OF SOUTH CAROLINA -- RESPONDENT,

APPELLATE CASE NO. 2022-000986

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PETITIONER'S PRO-SE WRITTEN EXPLANATION  
PURSUANT TO RULE 243(c), SCACR

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Reginald Byrd  
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Tyger River Corr. Inst.  
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Enoree, SC. 29335

Petitioner, pro-se

**RECEIVED**

AUG 18 2022

S.C. SUPREME COURT

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The PCR Court erred in dismissing the instant PCR application as successive without conducting a hearing into the matter even though Petitioner made a prima facie showing of his entitlement to relief and the grounds raised therein present genuine issues of material facts that need to be resolved and raise questions concerning constitutional rights and the denial of due process.

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ISSUE PRESENTED

The PCR Court erred in dismissing the instant PCR application as successive without conducting a hearing into the matter even though Petitioner made a prima facie showing of his entitlement to relief and the grounds raised therein present genuine issues of material facts that need to be resolved and raise questions concerning constitutional rights and the denial of due process.

### STATEMENT OF THE CASE

COME NOW, Reginald Byrd, pro-se, (hereafter "Appellant"), filing his written explanation pursuant to Rule 243(c), SCACR. This matter comes before the Court by way of a post conviction relief application filed by Appellant on March 30, 2020 (C/A No.2020-CP-42-01182). This Honorable Court issued a letter order on July 19, 2020 advising Appellant he has twenty (20) days to file a written explanation as to why the matter should be heard. Appellant's dorm as much of the entire institution has been on covid lock-down, Appellant respectfully moved for a 14-day extension of time within which to file his written explanation. To date Appellant hasn't received confirmation as to whether or not the extension has been granted. Assuming it has and out of an abundance of caution Appellant now files his written explanation as follows:

#### Procedural History

Appellant is presently confined in the South Carolina Department of Corrections pursuant to commitment orders of the Spartanburg County Clerk of Court. In November 1992, the Spartanburg County Grand Jury indicted Appellant for murder (1992-GS-42-6643). Theo Mitchell esquire represented Appellant. Appellant proceeded to trial by jury before the Honorable Joseph Cole. Appellant was convicted and sentenced to life imprisonment on December 16, 1993.

A timely notice of appeal was filed on December 22, 1993. The South Carolina Court of Appeals dismissed Appellant's appeal by way of unpublished opinion. State v. Byrd, Op.No.24483 (S.C.Fuled Aug.19, 1996). The remittitur was handed down September 4, 1996.

Appellant filed a post conviction relief application on March 4, 1997 (C/A No.1997-CP-42-00607). It should be noted the lower court noted the records for this matter and subsequent appeal have been destroyed (Conditional Order page 1 fn.1. The PCR was heard before the honorable John W. Kittredge, now-South Carolina Supreme Court Justice. The State was represented by Attorney Teresa Crosby. The matter was dismissed on April 29, 1999. An appeal was filed in the matter which was also dismissed according to the Conditional Order.

Appellant filed a federal habeas corpus petition in the district court of South Carolina C/A No.9:01-3070-19BG. Also noted by the Conditional Order page 2 fn.2 these records have been destroyed.

On March 30, 2020 Appellant filed the instant PCR application alleging the following grounds:

1. Ineffective Assistance of Counsel for failure to investigate.
  - a. Failure of counsel and the court, to investigate the laws of South Carolina as to whether they were "affixed" within the impression of the Great Seal of South Carolina. Section 16-1-60 of the 1976 Code, as last amended by Act 184 of 1993, is further amended to read: S.C. Const. Act III, Section 18, §18, Formalities of Act. No Bill of Joint Resolution have the force of law until it shall have been read (3) times and on (3) several days in each house, has had the (Great Seal) of the State affixed to it, and has been signed by the president of the senate, and the speaker of the House of Representatives: provided, that either branch of the General Assembly may provide by rule for a first and third reading of any bill or joint resolution by it's title only. The Great Seal of the State must be attached to an act before it can become effective, 1974-75. Op.Atty.Gen.4013 pg.85.

2. Newly Discovered Evidence and fraud Upon the Court.

a. The Applicant asserts upon belief and fact, that on or around November 2017 the State news paper reported the Great Seal of the State of South Carolina missing from certain laws here in South Carolina. Furthermore, the Applicant has researched this newly discovered evidence with the S.C. Department of Archives and History, with a Mr. Steven Tuttle confirming the great Seal is not affixed to the 1993 Act No.184(see exhibit 1). Also, the Applicant will submit a letter from Mr. Steven Draffin addressed to Mr. Spencer Hewitt, that states the Original 1995 Act No.7, has been lost and only a duplicate copy resides at the S.C. Department of Archives and History (see exhibit 2). Both Federal and state Constitutions forbid any law imparting the obligations of contracts. Therefore, the obligation of a contract is that duty of performing the contract according to it's terms and intent which the law recognizes and enforces. Again, like any ordinary bill must be in order to have force of law (must) have the Great Seal of the State attached hereto. Due to the facts of evidence, the Applicant moves this court to allow this post-conviction relief application to proceed. Furthermore, the Applicant asserts that this matter is a due process violation of the Fifth, Sixth and Fourteenth Amendments of the U.S. Constitution and the S.C. Constitution, Article III, Section 18.

By amendment filed August 21, 2020, Applicant alleged:

1. Ineffective assistance of counsel.  
a. failure of counsel to move for a Baston challenge during the vior dire proceeding, and furthermore, counsel failed to preserve the issue for appellate review.

By amendment dated April 29, 2021, Applicant alleges:

1. Ineffective assistance of counsel for,
  - a. failure to object to prosecution seating of an all-white jury.
  - b. Violation of Article 1, section 14 of the South Carolina Constitution.
  - c. Violation of the United States Constitution 14th Amendment Due Process Clause and Equal Protection.

Nearly two (2) years later on January 18, 2022 the Respondent filed a Return and Motion to Dismiss. The same day Respondents conjunctively submitted their own proposed Conditional Order of Dismissal. On March 4, 2022 the Honorable R. Keith Kelly signed Respondent's proposed order. The Conditional Order allotted Appellant 20-days to file his reply as to why the Conditional Order should not become final.

On February 18, 2022 Appellant filed a timely and in depth Opposition and Reply. On April 28, 2022 the Respondent again acting in their own accord drafted a proposed Final Order that the Honorable R. Keith Kelly ultimately signed. It should also be noted that the final order prepared by Respondent omitted anything argued in Appellant's opposition and reply to the Conditional Order and basically Respondent prepared a Final Order mirroring their Return and to their benefit. Appellant filed a timely notice of appeal and this Court issued a letter order advising Appellant to file a written explanation pursuant to Rule 243(c), SCACR.

The Written Explanation is as follows:

## ARGUMENT

The PCR Court erred in dismissing the instant PCR application as successive without conducting a hearing into the matter even though Petitioner made a prima facie showing of his entitlement to relief and the grounds raised therein present genuine issues of material facts that need to be resolved and raise questions concerning constitutional rights and the denial of due process.

The PCR Court erred in dismissing the instant application as successive and barred by the statute of limitations. In pertinent part: S.C. Code Ann. §17-27-90 states: "...may not be the basis for a subsequent application unless the Court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended pleading." Appellant submits that while successive PCR's are disfavored they are not prohibited by South Carolina case law.

Appellant in his Opposition and reply to the Court's Conditional Order explained that he is a layman in law and at each stage of his proceedings, both direct and collateral he was represented by counsel and South Carolina prohibits hybrid representation. Therefore, if and in fact [both] of those counsels were so inadequate in those proceedings to take notice of such negligence in the mishandling of the applicable laws to Appellant's case and issues raised thereby, it would result in a miscarriage of justice to pin those inadequacies and procedural irregularities on Appellant.

The Respondents argued and the lower Court adopted their position that the BATSON and Great Seal claim could have been raised in the initial PCR proceedings, which would raise the

question of the accuracy of the PCR corrective process and any default should be imputed to the State because South Carolina has enacted Post Conviction Relief Procedures, Rule 71.(a)(b)(c)(d)(e)(f)(g), South Carolina Rules of Civil Procedure. Specifically Rule 71.1(d), mandates the appointment of PCR counsel. Once PCR Counsel is appointed, PCR counsel is required by the rules to ensure that [all] grounds for relief are included in the application and amend the application if needed. Including but not to those claims is the "ineffective assistance of counsel.

The duty here is on the applicant to show a duty of care was owed to him. Rayfield v. S.C. Dept. of Corr., 297 S.C. 95, 105-06, 374 S.E.2d 910, 916 (Ct.App.1988), cert. denied 298 S.C. 209, 379 S.E.2d 133 (1989). An affirmative legal duty may be created by statute (here Rule 71.1(d), SCRPC), contract relationship, status, property interest, or some other special circumstances. Arthurs v. Aiken County, 338 S.C. 253, 525 S.E.2d 542, 547 (S.C.App.1999).

The affirmative legal duty here was and is created by the South Carolina Constitution, Article I, §3; S.C. Code Ann. §17-27-60 (2003) and Rule 71.1(d) South Carolina Rules of Civil Procedure, Post Conviction Relief Actions.

#### THE BATSON CLAIM

Appellant cannot fully address the merits of the Batson claim because as previously noted in the procedural history the lower court and Respondent asserted the records were destroyed. supra. However, Appellant would respectfully point out to this Court that his family has just located a copy of the trial transcript

and is mailing it to Appellant. Appellant would respectfully ask the Court to hold this claim in abeyance and allow Appellant the opportunity to fully brief this claim once he receives the trial transcript so that he can make it a part of the record for this Court. Especially in light of the fact that a substantial BATSON claim raises structural error concerns as a meritorious BASTON claim calls into question a defendant's Sixth Amendment right to a fair and impartial jury of his peers, a claim that without raises questions concerning the guilt and innocence of Appellant.

Newly discovered Evidence (The Great Seal) and Fraud Upon the Court

The failure of trial counsel to investigate and research the applicable laws for which Appellant was indicted constitutes deficient performance and the actual nature of underlying claim "the Great Seal" being missing raises concerns of another nature. That of fraud upon the court because the Prosecutor who is acting as the agent of the State is responsible to see that no conviction takes place except in conformity with the law.

Applicant is a layman who has no earthly idea what the great Seal was prior to it being reported in the South Carolina State news Paper on or around November 2017. Once the Appellant seen the paper he began researching it himself with the South Carolina Department of Archives and History. Mr. Steven Tuttle confirmed that the Great Seal is not affixed to the 1993 Act.No. 184 (see Appellant exhibit 1 attached to PCR application). Appellant also submitted a letter of correspondence from Mr. Steven Draffin addressed to Mr. Spencer Hewitt that specifically states the Original 1995 Act. No;. 7, has been lost and only a duplicate

copy resides at the S.C. department of Archives and History.

As dictated by South Carolina Code of Laws, the Secretary of State is responsible for the state wide registration of corporations, Uniform Commercial Code Interests, business opportunities, employment agencies, trademarks and notaries.

Article 3, Section 18 of the South Carolina Constitution provides that "[n]o Bill or Joint resolution shall have the force of law until it shall have been read three times on three several days in each house, has had the Great Seal of the State affixed to it, and has been signed by the President of the Senate and the Speaker of the House of Representatives provided, that either branch of the general Assembly may provide a rule for a first and third reading of any Bill or Resolution by it's title only.

Upon information and belief dating back to at least November of 1976, it has become the job of the Secretary of State to affix "the Great Seal" to each law passed in South Carolina such that it gains the force of law. Upon further information and belief dating back to 1976, Act 184 the Secretary of State had fail[ed] to carry out this function as to numerous Bills, meaning they never became valid. The Secretary of State is required to transfer all laws to the South Carolina Department of Archives and History within five (5) years of the law's passage and the Secretary of State has not complied with this requirement since 1976 and the enactment of Act 184.

Act 184 of 1993 which Appellant was convicted under was in fact passed during the time period that the Secretary of State had a habit and routine of fail[ing] to affix the Great Seal to laws. Accordingly, it is more likely than not that the Great Seal

was never affixed to law by the Secretary of State and that law Act 184 has never become valid. Therefore, the alleged law Applicant was convicted under and has lost his liberty because of was never valid or enforceable pursuant to the South Carolina Constitution.

Although the correspondence evidence from the South Carolina Department of Archives clearly states there is no visible seal, if Act 184 Appellant was convicted under now has the great Seal affixed, a hearing and discovery is necessary to determine when the Great Seal was affixed to the laws, because the laws would not have become valid until the Great Seal was affixed according to the South Carolina Constitution. If the Great Seal was mysteriously affixed [after] the effective date of the law, the law would still be invalid and unenforceable on it's face and Appellant's conviction would be void.

It should also be noted that the Conditional Order at page 7 as prepared by the Respondent specifically states: "...this evidence was discoverable prior to trial.", thus Respondent even concedes to such.

Appellant believes he has shown he made a prima facie showing of his entitlement to relief. Not only is this error it is structural error and requires a hearing and or reversal of the conviction in the interest of justice.

Due to the nature of these claims the lower Court erred in failing to find these issues present sufficient reasons why the claims were not asserted in the original application.

CONCLUSION

Based on the foregoing, Petitioner respectfully prays the Court will grant the Petition, appoint Counsel and Order full briefing on the matter or in the alternative grant the Petition and remand to the lower Court with instructions to appoint counsel and conduct an evidentiary hearing into the matter.

DATE: 8/15/22, 2022

Respectfully Submitted,

/s/ Reginald Byrd

Reginald Byrd

Petitioner, pro-se