Bobby C. Jenkins #271240
Perry Corr. Inst. (Q4A-124)
4301 Oaklawn Rd.
Pelzer, S.C. 29669

May 23, 2013

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
P.O. Box 11330
Columbia, S.C. 29211

Re: Bobby C. Jenkins v. State
Appellate Case No. #2013-000747

Dear Honorable Sir:

In Compliance With your Extention of Time "Order", dated May 8, 2013 And granting until June 7, 2013, to file the Written Explanation required by Rule #243(c), SCACR. The Appellant Hereby files his Explanation unto the S.C. Supreme Court, And the same was served on the Honorable James Rutledge Johnson, S.C. Attorney General Office !!!

Sincerely,
Bobby Jenkins
Bobby C. Jenkins #271240

cc:

Bobby C. Jenkins #271240
Perry Corr. Inst. (Q4A-124)
430 Oaklawn Rd.
Pelzer, S.C. 29669

May 23, 2013

The Honorable James Ruttledge Johnson
Ass. Attorney General
S.C. Attorney General's Office
P.O. Box 11549
Columbia, S.C. 29211

RECEIVED
MAY 30 2013
S.C. SUPREME COURT

Re: Bobby C. Jenkins v. State
Appellate Case No. #2013-000747

Dear Honorable Sir:

Enclosed, please find a copy of the Appellant's Written Explanation required by Rule #243(c), SCACR. The Explanation is hereby submitted before the extended deadline of June 7, 2013 !!!

Respectfully Submitted,
Bobby Jenkins
Bobby C. Jenkins #271240

cc:

In The State of South Carolina
In The Supreme Court

Appellate Case No. #2013-000747

Bobby C. Jenkins #271240,
Appellant,

v.

The State of South Carolina,
Appellee.

Certificate

of

Service

Comes Now Bobby C. Jenkins #271240, Appellant, and hereby Certify, that a Copy of the Written Explanation, Pursuant to Rule #243(c), SCACR, was served upon the Appellee, the Honorable James Rutledge Johnson, S.C. Ass. Attorney General; S.C. Attorney General's Office; P.O. Box 11549; Columbia, S.C. 29211, via United States Postal Mail, by depositing it in the U.S. Mailbox, here at Perry Corr. Inst.; 430 Oaklawn Road; Pelzer, S.C. 29669.

RECEIVED

MAY 23 2013

P.C.I. MAILROOM

Bobby Jenkins

Bobby C. Jenkins #271240

(2.)

The Appellant's Written Explanation, Pursuant to Rule #243(c), SCACR, and the Certificate of Service, is hereby filed in Compliance With:

(1.) Houston v. Lack, 487 U.S. 266 (1988);
(2.) Lomax v. Armontrout, 923 F.2d 574, (8th Cir) Cert. denied, 112 S.Ct 60 (1991);
(3.) Sueddeth v. Arizona Atty Gen., 921 F.2d 206, (9th Cir. 1990).

This day 23rd of May 2013:

Affirmed to and Subscribed to before me this 23rd day of May 2013:

Patricia Cochran
Notary Public:

4-26-2020
My Commission Expires:

RECEIVED
MAY 23 2013
P.C.I. MAILROOM

Bobby Jackson
X Signature

cc:

In The State of South Carolina
In The Supreme Court

Appellate Case No. # 2013-000747

Bobby C. Tenkins #271240, Appellant,	"Notice of Appeal"
v.	"Explanation"
The State of South Carolina, Appellee.	Pursuant To Rule #243(c), SCACR

Comes Now Bobby C. Tenkins, Appellant, Pursuant to Rule #243(c), SCACR, And "Order" by the Honorable Daniel E. Shearouse, Clerk of Court, South Carolina Supreme Court to Submit an Explanation As to Why the Circuit Courts' Ruling was Improper !!!

The Appellant Asserts the Circuit Court's Ruling Was Improper And Violates his Fourteenth (14th) Amendment due process Rights. And humbley asks this Honorable Court to "Remand" his Case back to the

Circuit Court for an Evidentiary Hearing And shows the Court the following:

(1.) The Appellant Asserts the "Final Order", Issued by the Honorable Benjamin Culbertson, on February 25, 2013, Is not in Accord with the S.C. Courts Ruling in McCoy v. State, ___ S.E. 2d ___, 2013 WL 441549 (February 6, 2013)!!!

In McCoy v. State, Supra, the Court stated, ..." When Considering the State's Motion for Summary Dismissal, Where No Evidentiary Hearing has been held, the PCR Judge must Assume facts presented by the Applicant are true and view those facts in the light most favorable to the Applicant. See E.g. Leamon v. State, 363 S.C. 432, 434, 611 S.E. 2d 494, 495 (2005)(citing S.C. Code Ann. § 17-27-80). Judge Culbertson's Final Order, focuses only on the After Discovered Evidence issue and Clearly Ignores a Substantial Constitutional Rights Violation. Whereas the Applicant Asserted And presented Evidence (via Exhibits) that

At the time he Pled Guilty, to Kidnapping, CSC 1st, and Armed Robbery, on December 6, 2000. The Evidence of a Mental History, Clearly supports the fact that Applicant was INCAPABLE of Assisting his Attorneys in his defense. Nor understand the Nature of the Crimes he was Charged With or Pled guilty too. Also, there were Mitigating Evidence, (via Mental Health History) had his Attorneys properly and thoroughly INVESTIGATED Applicant's Case. Both the Court and his Attorneys, would have Requested that he be giving a Competency - to Stand - Trial Hearing !!!

(2.) Where an Applicant Alleges facts that would establish an Exception to Either the Statue of Limitations or the prohibition Against Successive PCR Applications And those facts are not Conclusively Refuted by the Record before the PCR Court, a question of fact is raised which can only be resolved by a hearing. Cf. Delaney v. State, 269 S.C. 555, 556, 238 S.E. 2d 679 (1977); quoting from McCoy v. State, Supra.

The PCR Court erred, by

by not granting the Applicant a PCR hearing when a Substantial Due Process Rights violation was asserted, in regards to a Competency Hearing Pursuant to S.C. Code Ann. § 44-23-430. The United States Supreme Court Ruled, in Pate v. Robinson, 383 U.S. 375, 86 S.Ct 836 ..... A sanity hearing can not be waived.

(3.) The standard for determining whether an Accused is entitled to a Competency hearing (to stand trial" has been set forth in a case interpreting Pate v. Robinson, Supra: The United States Supreme Court stated — "The import of our decision in Pate v. Robinson, is that evidence of a defendants irrational behavior, his demeanor at trial and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required, but that even one of these factors, standing alone, may, in some circumstances, be sufficient." See Dirope v. Missouri, 420 U.S. 162, 180, 95 S.Ct. 896. Quoting from Blair v. State, 273 S.E.2d 536 !!!! "(Please see Attached to Applicants PCR, and marked as Exhibits A & B, is evidence

of Mental Health Concerns at two (2) Medical Facilities and Applicant's trial Attorneys failed to bring to Court's Attention prior to his guilty plead.)"

(4.) Both, the trial Court, And the PCR Court erred in failing to conduct a Competency hearing pursuant to S.C. Code Ann. § 44-23-430. However, neither Court contends the Applicant (Appellant) waived his right, by failing to request the hearing. Considering the fact that Applicant (Appellant) has a history of Mental Health Issues.... Without a Competency to stand trial hearing. The trial Court and PCR Court by their own "In-Actions"..... has subjected him to Sixth (6th) Amendment Rights violations of the United States Constitution, of In-effective Assistance of Counsel, under Strickland v. Washington, 104 S. Ct. 2052. Also, subjected him to due process Rights violations under Fourteenth (14th) Amendment of the United States Constitution. See Pate v. Robinson, 383 U.S. 375, 86 S. Ct. 836. And Drope v. Missouri, 420 U.S. 162, 95 S. Ct. 896. In Pate v. Robinson, Supra, the United States Supreme Court held that

the failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial. Accordingly, the Fifth (5th) Circuit Court of Appeals held in its "En Banc Decision" in Lee v. State of Alabama, (5th Cir. 1967), 386 F.2d 97 ——

"When a prisoner, either state or federal, seeking post-conviction relief, asserts with substantial facts to back up his allegation, that at the time of the trial he was not mentally competent to stand trial, and that there was no resolution of that precise issue before he was tried, convicted, and sentenced, the protection of the Fourteenth Amendment to the United States Constitution requires that such conviction and sentence be set aside unless upon adequate hearing it is shown that he was mentally competent to stand trial." (386 F.2d at 105). Carrol v. Beto, 421 F.2d 1065 (1970)

(5.) The Honorable Benjamin Culbertson's Final Order, dated February 25, 2013, is an error that mis-applied S.C. Code Ann. § 17-27-70(c) (1985). Because it completely over-

Looks And Ignores A Substantial Fourteenth Amendment Right that has been asserted by the Appellant. In which his right to a Competency - to - Stand- trial- Hearing, has Not been Afforded to him. This right Can not be Waived Irregardless of the Lasp of time and failure to grant it When evidence has been presented that the defendant has a "History" of Mental Health issues prior to trial. As in the Case at bar..... violates the defendants due process rights And the Conviction Can not stand. See e.g. Pate v. Robinson, Supra. However, Appellant's Case should be guided by the Wisdom of State v. Blair, 273 S.E. 2d 536; And 282 S.E. 2d 596. The "final Order", Issued in the Case at bar..... Constitutes A Miscarriage of Justice, that ignores both the United States Supreme Courts and the South Carolina Supreme Courts Rules, Laws, And Precedents !!!!!!

(7.) The Applicants Newly discovered Evidence Issue, was similar discovered In Essence like McCoy v. State, ___ S.E.2d ___, 2013 WL 441549, And was

filed into the Horry County Clerk of Court's Office via Motion to Amend, Pursuant to Rule #15(A) SCR Civ.P., on November 5, 2012. The Applicant for the sake of "Brevity" ..... Submitted names of Witnesses, along with transcript pages in his Codefendant's trial, State v. Eric Jenkins, that shows the Horry County Solicitor's Office knew and used perjured testimony that compelled him to plead guilty. The actions of the Solicitor, is a Brady v. Maryland, violation, because this evidence was withheld from the Applicant and his Attorneys prior to him pleading guilty, on December 6, 2000, before the Honorable Sidney T. Floyd, in the Horry County Court of General Sessions.

(8.) The Newly Evidence or "(After-) Discovered Evidence" was discovered after the guilty plead, on December 6, 2000. It is evident that both of Appellant's trial Attorneys were ineffective for not properly investigating the Horry County Solicitor's files. Therefore, his Sixth Amendment Right to Effective Assistance of Counsel under the United States Constitution were violated by the deficient performances of

Mr. Dizzie West, Esq. and Mr. James Calmore, Esq., of the Horry County Public Defender's Office. The after-discovered evidence, is material to Appellant's guilt or innocence, And he would not have pled guilty had he known about the withheld evidence.

(A.) The Appellant Asserts, that trial Counsels actions fell below the professional norms under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

(B.) Appellant asserts that he pled guilty on the advice of his two (2) Attorneys. However, the after-discovered evidence revealed in his co-defendants (State v. Jenkins) trial transcript of 2004. That was sent to the Appellant via the Office of S.C. Appellate Defense, in 2009. Clearly shows that Counselors representation fell below an objective standard of reasonableness And that there is a reasonable probability that, but for Attorneys errors, the defendant would not have pled guilty but would have insisted upon going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366,; And Roscoe v. State, 546 S.E.2d 417 (2001).

(C) The Appellant Asserts that Newly Discovered Evidence that is the Substance of S.C. Code Ann § 17-27-45(C) Allegation in the P.C.R. Application will Show the following:

(1.) Brady v. Maryland, Violation
(2.) Prosecutorial Misconduct
(3.) Knowing Use of Perjured Testimony
(4.) Due Process Rights Violation
(5.) Ineffective Assistance of Counsel
(6.) Floyd v. State, 400 S.E.2d 14 Violation..... Honorable James E. Lockemy .... Issued Court Order, on January 19, 1998, to give Blood, Hair, & Saliva Samples .... and Presided over & Dismissed Second PCR, after the S.C. Supreme Court Reversed And Remanded for a New PCR Hearing.!!!

(D.) The Appellant Further Asserts

The PCR Court erred in Issuing the "Final Order", Without granting him an Evidentiary Hearing. See McCoy v. State, Supra. Also, he have Asserted With documentation, a substantial Due Process Violation of his Fourteenth Amendment Rights Under the United States Constitution. That he had a history of Mental Health issues, and "Head Injury" As the result of being hit by a Car, Prior to the Crime, during his trial, And was Mis-led into An Involuntary Guilty Plea by his two trial Attorneys. See Pate v. Robinson, Supra, and Blair v. State, Supra.

"Conclusion"

Wherefore, the Appellant states for the reasons herein state supported by Case Laws. He is Entitled to An Appeal in Regards to the "Erroneous", Final Order, issued by the Honorable Benjamin Culbertson, on February 25, 2013.

Further, in light of the law by both the United States Supreme Court,

And the South Carolina Supreme Court, In Pate v. Robinson, Supra, and Blair v. State, Supra. The Due Process Rights of both Federal and State Constitutions entitles him to a PCR Hearing on the Mental Health Allegation by itself. The Appellate Court's Constitutional duty or Obligation..... Is to "Remand" this Matter for a Hearing. Otherwise, the Appellant will suffer a fundamental unfairness that violates his due process rights under the Fourteenth Amendment as well as subject him to a Miscarriage of Justice!

Respectfully Submitted,
Bobby Jenkins
Bobby C. Jenkins #271240

Affirmed to and Subscribed to before me
this 23rd day of May 2013
Patricia Buchanan
Notary Public:

4-26-2020
My Commission Expires: