STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari From Cherokee County
The Honorable J. Derham Cole, Circuit Court Judge
Case No. 2019-CP-11-0457

Alonzo C. Jeter, III, ... PETITIONER,

v

State of South Carolina, ... RESPONDENT.

APPELLATE CASE NO. 2022-000750

SUPPLEMENTAL / AMENDED
PETITIONER'S EXPLANATION
(Pursuant to RULE 243(c), SCACR)

PART II

ALONZO C. JETER, III

Manning Correctional Institution
502 Beckman Drive
Columbia, South Carolina

PETITIONER / *pro se*

STANDARD OF REVIEW

In PCR actions, the burden of proof is on the applicant. Butler v State, 286 SC 441, 334 SE2d 813 (1985). "This Court gives great deference to the factual findings of the PCR court and will uphold them if there is any evidence of probative value to support them." Sellner v State, 416 SC 606, 610, 787 SE2d 525, 527 (2016). "Questions of law are reviewed de novo, and we will reverse the PCR court's decision when it is controlled by an error of law." Id.

"Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent of the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief." Leamon v State, 363 SC 432, 434, 611 SE2d 494, 495 (2005); S.C. Code Ann. §17-27-70(b),(c) (2014). When considering the State's motion for summary dismissal of an application, where no evidentiary hearing has been held, the PCR judgment assume facts presented by the applicant are true and view those facts in the light most favorable to the applicant. Leamon, 363 SC at 434, 611 SE2d at 495. When reviewing the propriety of a dismissal, an appellate court must view the facts in the same fashion. Id.

Love v State, 428 SC 231, 834 SE2d 196 (2019) ("On review of a post conviction court's resolution of procedural questions arising under the Uniform Post-Conviction Procedure Act or the South Carolina Rules of Civil Procedure, the appellate court applies an "abuse of discretion" standard.") Mangal v State, 421 SC 85, 805 SE2d 568 (2017) ("Supreme Court applies an abuse of discretion standard on review of a post-conviction relief (PCR) court's resolution of procedural questions arising under the Post Convictions Procedure Act or the Rules of Civil Procedure.")

Dennison v State, 371 SC 221, 639 SE2d 35 (2006) ("Unlike review of a conviction, which is by direct appeal and is a constitutional right, review of a decision in a post conviction relief matter is discretionary by way of a writ of certiorari.")

Rule 242(b)(1), (4), SCRCP, indicates that some of the character of reasons for which this court will consider hearing of Petitioner's case is "[w]here there are novel questions of law, and "[w]here substantial constitutional issues are directly involved. This case does in-fact meet this threshold.

ANALYSIS AND DISCUSSION

Need For Declaration and Mandamus Relief &/or this Court's Adjudication of Matters

Petitioner would present the following questions to this Court as he has attempted to have these questions addressed on a prior occasion by the South Carolina Supreme Court. The South Carolina Supreme Court has declined to hear the questions and also compel in its original jurisdiction, notwithstanding the fact that should Petitioner file the action for Declaratory Judgment and Mandamus in the

County Clerk of Court's Office – Petitioner would be essentially asking and agreeing that the Respondent/Defendant/Adversaries in the actions file and adjudicate upon their own proceedings and case. (The very reason why Petitioner brings the actions in the first place.) See *Alonzo C. Jeter, III v State of South Carolina, Honorable J. Derham Cole, Brandy W. McBee*, Appellate Case No. 2022-000120)

Petitioner is aware of S.C. Code Ann. §17-27-20(B), which states, ("Except as otherwise provided in [the PCR act], it comprehends and takes the place of all other common law, statutory or other remedies heretofore available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.")

Petitioner is also aware of the South Carolina Court of Appeals' ruling in Carpenter v South Carolina Department of Corrections, 431 SC 512, 848 SE2d 346 (2020) (finding Carpenter's claims the he raised under the Declaratory Judgment Act were procedurally barred by the PCR Act because his claims, under the PCR Act "fit squarely into a category available for redress".)

Petitioner does not agree that the factors which exists in *Carpenter* equates with the facts, factors, and procedure posture of the case at bar. However out of an abundance of caution, Petitioner brings his questions and request for this courts compelling action in this action at bar. Most importantly is the public importance and public interest need for future guidance and that there be a declaration or ruling made which would cause the Office of Attorney General and the PCR courts, and clerks of courts to cease and desist their violations of separation of powers and the Constitutional rights to due process of indigent PCR applicants and all PCR applicants in general.

See also Rule 57, SCRCP, stating, "The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate".

Petitioner seeks that this Court would exercise in its inherent powers and construe Petitioner's pleadings liberally as he is an indigent pro se litigant. Petitioner also seeks that this Court would ensure that Petitioner's questions are answered, declared, and that the courts are compelled to Act in accordance with the mandates of the South Carolina and United States Constitution. Petitioner prays that this Court would ultimately exercise in its inherent powers to bring integrity back to the PCR courts in this state. See Ex parte Dibble, 279 SC 592, 310 SE2d 440 (1983) (This Court has the inherent power to do all things to ensure that just results are reached.)

Petitioner's Specific Legal Right For Necessity Of Discharge Of Duty

Petitioner has a right that the clerk of court and judge perform their ministerial duties. This right comes by way of Rule 71.1, SCRCP, the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 -160, and the rights to Due Process and Equal Protection as provided for under the South Carolina Constitution and United States Constitution.

QUESTIONS PRESENTED

1. Does the allowance of the Attorney General's Office to schedule all matters which relate to PCR actions violate Separation of Powers Doctrine and Due Process Rights guaranteed by the South Carolina and United States Constitutions?

2. Does the allowance of the Attorney General's Office to schedule motions and effectively make the determination as to whether or not motions will be heard or acknowledged violate Separation of Powers Doctrine and Due Process Rights guaranteed by the South Carolina and United States Constitutions?

3. What statute, court rule, or other authority does South Carolina's circuit court, circuit judges, and clerks of court rely upon that provides that the ministerial duties of making the determination as to whether or not an indigent PCR applicant shall be appointed counsel or not, the scheduling of motions, placing motions on the motion docket and calendar; are to be handed over to the Office of the Attorney General's Office?

4. Should Former Chief Justice, Jean Hoefer Toal's Administrative Order, Supreme Court Order No. 2008-10-06-01, RE: 'Appointment of Counsel in Post-Conviction Relief Cases Before The Circuit Court', be rescinded, as this administrative order serves as the catalyst for much of the Common Pleas PCR court's violations of Separation of Powers and of Due Process; as the order appears to be what the Court's lean upon in violating the Constitutional Rights of South Carolina's PCR applicants?

Petitioner seeks that this Court would adjudicate upon these questions and matters in which way is proper and that this Court would exercise in its inherent powers to do all things equitably and in the interest of justice. Petitioner has also informed this Court of his wishes that it would compel the lower court to make a ruling on the filed motions, and other ministerial duties that the lower court and clerk of court was to perform. State v Legg, 416 SC 9, 785 SE2d 369, 371 (2016) ("Procedural Due Process contemplates a fair hearing before a legally constituted impartial tribunal.")

STATEMENT OF THE CASE

Petitioner filed his Application for Post-Conviction Relief in the Cherokee County Court of Common Pleas, on (date), along with a Certificate of Service which certified that Petitioner had also served a copy of the application on the State / Office of Attorney General (Appx. I Pgs. 1-10) Petitioner also filed on this same date

a Memorandum In Support of the Application for PCR, Exhibits A thru D and an Affidavit of Authenticity. (Appx. I, pgs. 11-26)

Upon receiving confirmation that the Application had been received and filed with the Cherokee County Clerk of Court by Petitioner's receipt of a PCR case number, Petitioner filed a Motion For Appointment of Counsel as required by S.C. Code Ann. §17-28-60, along with an Affidavit In Support (Appx. I Pgs. 51-55)

Petitioner filed a Request for Admission of Genuiness of Documents on October 28, 2019. (Appx. I, pg. 70)On August 3, 2020, Petitioner filed a Motion For Appointment of Counsel, Affidavit In Support, and Memorandum In Support of Appointment of Counsel. (Appx. I, pgs. 56-61) Petitioner also filed a Motion for a Hearing on November 20, 2020, along with a Supplemental Memorandum In Support of the Application For Post Conviction Relief. (Appx. I, pgs. 72-80)

The Commons Pleas Court, Judge, nor Office of the Attorney General never acknowledged, addressed, nor responded to the motions and requests.

On December 2, 2020, (18 months after the initial filing of the Application for PCR), the Office of Attorney General filed a Return to the Application for PCR, along with a Motion to Dismiss and a Proposed Conditional Order of Dismissal. (Appx. I, pgs 81-92; 103-117)

The Office of Attorney General also easily obtained Petitioner's records of the SCDC. (Appx. I, pgs. 168, 87) Note: Petitioner has had to remain in a constant battle with the South Carolina Department of Corrections in attempt to obtain copies of his SCDC records in which he would use in support of his Application for Post Conviction Relief. (See for example *Alonzo C. Jeter, III v South Carolina Department of Corrections*; Docket No. 22-ALJ-04-0183-AP – Currently pending in the South Carolina Administrative Law Court) Petitioner asks that this Court also take judicial notice of the case file record in this case. Colonial Penn. Ins. Co. v Coil, 887 F2d 1236, 1293 (4th Cir. 1989) (The court "not[ing] that 'the most frequent use of judicial notice is in noticing the content of court records.'")

The Proposed Conditional Order of Dismissal was quickly acknowledged and signed by the Chief Administrative Judge for Common Pleas, on December 7, 2020. This was only 5 days after the Office of Attorney General presented the proposed order for his signature). (See Appx. I, pgs. 81, 87, 113, 103) Petitioner objected to the conditional order and did emphasize that motions and exhibits were filed, pending, and entered into the record. Petitioner also emphasized that he had not been provided equitable opportunity to call any omissions in the proposed order to the attention of the PCR judge prior to the judge's signing and issuance of the order as Petitioner was to be allowed pursuant to Rule 501, SCACR, Canon 3B(7)(e); S.C Code Ann. § 17-27-70(b); or Pruitt v State, 310 SC 254, 256, 423 SE2d 127, 128 (1992); and Fishburne v State, 427 SC 505, 832 SE2d 584 (2019). (Appx. I, pg. 147)

Petitioner emphasized that the order, when prepared by the Attorney General's Office, is a *"Proposed Order"*. However, when the judge signs this order it is no longer a Proposed Order, but rather is then deemed at that time a *"Conditional Order"*. As Petitioner was to receive the proposed order by mail, the 5 day period before the judge signed the order was clearly not equitable time and opportunity to respond, reply, or call any omissions to the judge prior to the judge's signing it.

Petitioner did also pray that the judge and court would be reminded of Rule 501, SCACR, Canon 3B(5), seeking that the judge be alert to avoid behavior that may be perceived as prejudicial; and Rule 501, SCACR, Canon 3B(7), seeking that the judge accord Petitioner the right to be heard.

Petitioner did renew his motions for appointment of counsel, hearing, and did file other motions. (Appx. I, pgs. 180 – 190) Notwithstanding these filings, objections, and Petitioner's bring to the court, judge, and Office of Attorney General's attention that motions remained pending, outstanding; the court, judge, nor Office of Attorney General acknowledged Petitioner and thus made no actions.

On April 5, 2021, (4 months later), the Office of Attorney General submitted a Proposed Final Order of Dismissal to the Chief Administrative Judge for Common Pleas Court. Petitioner did file objections to this Proposed Order and did bring to the court's attention that motions remained pending. (Appx. I, pgs 192-204) Notwithstanding Petitioner's efforts and diligence in this regard, Petitioner was again not acknowledged in any way.

This inequity is a practice in this state. See also for indulgence, *Alonzo C. Jeter, III, Barry Tucker*, C/A No. 2:19-cv-1945-MGL-MGB (D.S.C. 2020), as United States Magistrate Judge, Mary Gordon Baker speaks regarding the Common Pleas court judge's failure/refusal to acknowledge and rule on the motions filed in Petitioner's PCR Case *Alonzo C. Jeter, III, v State of South Carolina*, PCR Case No. 2017-CP-11-0486, which was also filed in the Cherokee County Court of Common Pleas wherein Petitioner did motion for a hearing and appointment of counsel.

Petitioner, realizing that this inequitable practice repetitive, then began to make inquiries to the Cherokee County Clerk of Court seeking to be informed of who makes the determination as to what date motions would be heard. (Appx. I, Pgs. 229, 231, 280, 421) Petitioner also inquired of who makes the decision as to whether or not counsel would be appointed to indigent PCR applicants. (Appx. I, pg. 214) The Cherokee County Clerk of Court's Office, using vagueness as a means to escape exposing truth, simply replied that all scheduling in PCR matters are handled by the Office of the Attorney General.

Petitioner, seeking to be provided more thorough answers, made additional inquiries to the Cherokee County Clerk of Court's office; however, the Clerk's office would simply not respond but would file these inquiries under Petitioner's PCR case. (Appx. I, pgs. 214, 309, 355)

Petitioner wrote to the South Carolina Court Administration, South Carolina Office of Indigent Defense, South Carolina Supreme Court, and also to other offices of clerks of courts. However, most responses remained vague in attempt to dodge the questions and not expose the truth regard to the matters. (Appx. I, pgs. 345, 346, 392, 393, 413) (See also Appx. I, pgs. 328-332). However, the truth is hidden deep within the responses. It is clear that the determination of whether or not an indigent PCR applicant will be appointed counsel or not, is made by the Office of the Attorney General; the Respondent/Adversary in the case. (Appx. I, pgs. 363-364; 404-405; 365-366)

Petitioner finally became aware of an administrative order which was issued by Former Chief Justice, Jean Hoefer Toal, Order No. 2008-10-06-01 (October 6, 2008), 'RE: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court'. (Appx. I, pgs. 344, 343, 403, 418-422) This order seemed to clearly reveal that Former Chief Justice Jean Hoefer Toal had elected to designate the Office of Attorney General as the determinator as to whether orr not an indigent pro se PCR applicant would be appointed counsel or not.

Reading the administrative order carefully, however, Petitioner found that notwithstanding the Office of Attorney General possible determination that counsel should not be appointed, the Chief Judge of the Common Pleas Court could issue a written order appointing counsel. It was a mandate that if the Office of Attorney General makes this determination, counsel could only be appointed by the PCR applicant obtaining a written order from the Chief Judge of the Common Pleas Court. As the administrative failed to clarify exactly how a PCR applicant was to pursue such a written order, Petitioner then searched statutes and case law of South Carolina and found no answers in this regard.

Petitioner, then looking to S.C. Code Ann. §17-28-60, found that the statute states as follows:

> If the applicant is unable to pay court costs and expenses of counsel, these costs and expenses shall be made available to the applicant in amounts and to the extent provided pursuant to Section 17-27-60. The applicant must request counsel at the time he files his application. The court must appoint counsel for an indigent applicant after the court has determined that the application is sufficient to proceed to a hearing but prior to the actual hearing. If counsel has been appointed for the applicant in an ongoing post-conviction relief proceeding, then the counsel appointed in the post-conviction relief proceeding shall also serve as counsel for purposes of this article. The performance of counsel pursuant to this article shall not form a basis for relief in any post-conviction relief proceeding.

S.C. Code Ann. §17-28-60

Again, in attempt to the attention of the judge in regards of Petitioner's motions for appointment of counsel, other motions filed, and that the judge would ultimately provide and independent adjudication upon the motions and merits of the case globally, Petitioner filed other motions.

On August 16, 2021, Petitioner filed a motion titled, 'Motion For Independent Adjudication And Hearing On Motions'. (Appx. I, pgs. 220-227) (Note: The Motion For Independent Adjudication was placed in the mail on August 13, 2021) (Appx. I, pg. 221)

On September 1, 2021, Petitioner placed in the mail for filing, a motion titled, 'Motion For Written Order Of The Chief Judge For Administrative Purposes For The Court Of Common Pleas For Appointment Of Counsel'. (Appx. I, pg. 233) This motion was filed in the office of the Cherokee County clerk of court on September 7, 2021.(Appx, I, pgs. 232-238)

Coincidentally and interestingly, the Final Order of Dismissal was signed by the judge immediately after these two motions which sought to invoke the attention of the judge was filed. (Appx. I, pgs. 239, 245) (See also Appx, I, pgs. 430, 435)

Petitioner thereafter did file a timely Rule 59(e), SCRCP motion. (Appx. I, pgs. 247-274) Petitioner also filed a supplemental Rule 59(e), SCRCP, motion. (Appx. I, pgs. 286-298) Seeking to ensure issues were preserved, Petitioner also filed an additional supplemental Rule 59(e), SCRCP, motion (Appx. pgs. 450-458)

State Farm Mutual Automobile Insurance Company v Goyeneche, 429 SC 211, 837 SE2d 910 (2019) ('If a party is unsure whether he properly raised all issues and obtained a ruling, he must file a motion to alter or amend a judgment, or an appellate court may later determine the issue or argument is not preserved for review.)

Lack on Notice of Rule 59(e), SCRCP Hearing (Unfair Surprise)

A hearing was held on Petitioner's Rule 59(e), SCRCP, motions on DATE. Petitioner did not receive notice of this hearing that thus was not prepared. *See* Rule 6(d), SCRCP, ("[N]otice of the hearing [] shall be served not later than ten days before the time specified for the hearing.") Petitioner did not cite Rule 6(d), SCRCP, as he did not know exactly how many days notice he was entitled to. Petitioner was not in the position of the Office of Attorney General and judge, present at the hearing with laptops and assistance, and with legal reference such as WestLaw or Lexis at their fingertips so that he would know to cite Rule 6(d), SCRCP in his defense of not being provided *any* notice.

Dedes v Strickland, 307 SC 152, 414 SE2d 132 (1992) ("[The South Carolina Supreme Court] "construe[s] [Rule 6(d), SCRCP] to require that specific notice of the day certain fixed for the hearing must be furnished not later than ten days prior to

such hearing..."); Blanton v Stathos, 351 SC 534, 542, 570 SE2d 565, 569 (2002) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.") (citations omitted).

In this hearing, it immediately became apparent to Petitioner that this hearing was simply one of formality as the judge wasn't aware of what Petitioner had included in the record of the case, did not have all of the Rule 59 (e), SCRCP, motions that Petitioner had filed, and when Petitioner objected to the fact that Petitioner had not received notice of the hearing – the judge was at a loss for words. This clearly was a violation of Petitioner's Constitutional rights to Due Process. (Petitioner does not have a copy of the transcript of that proceeding and has motioned this Court that it would assist him in funding to acquire a transcript of the proceeding. The Petitioner seeks also that a copy of the transcript be included in the Record / Appendix of this case.)

Chastain v Hiltabidle, 381 SC 508, 673 SE2d 826 (2009) (To demonstrate prejudice in a matter involving allegedly insufficient notice, an appellant must establish if he or she had received appropriate notice, he or she would have done something different, thereby affecting the decision of the trial court and advancing his or her case.) Had Petitioner been properly noticed he would have had the full and accurate record available at the hearing and would have been able to point to specific things within the record to support his arguments. Also, the Petitioner would have been able to have notes in which he would have been able to ensure that all matters in which he intended to cover with the judge were covered. Petitioner did object stating that he could not understand the composition of the record at that time as the record was composed by the Office of Attorney General and was not full and complete. This injured Petitioner as he was not able to have meaningful discussions and arguments with the Respondent nor the court. The Petitioner would have also ultimately been prepared to ask the judge if he had looked over the motion for appointment of counsel and other motions. Also, and most importantly Petitioner would have been able to ask the judge from whence authority does the allowance of the Office of Attorney General's Office to schedule all matters, schedule motions and determine whether or not the motions would be heard, and decide whether or not indigent PCR applicants would be appointed counsel or not.

Who told the Office of Attorney General to be present at the hearing? How did the Office of Attorney General know what day the hearing would be held and the time it was to be held? How did the Office of Attorney General know to prepare and have available at the hearing a convoluted printed record which consisted of mixed filings from Petitioner's cases which were relative and non-relative to Petitioner's PCR action? This seems to be a strategic practice of the Office of the Attorney General and court working in collaboration to violate the due process rights of indigent PCR applicants.

The question of notice is fundamental to the due process clause of both the United States Constitution and South Carolina Constitution. See U.S. Const. amend. XIV ("No State shall... 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."); S.C. Const. art. I, § 3 ("The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.")

Garrison v Target Corporation, 429 SC 324, 838 SE2d 18 (2020) ("[The State] should not be permitted to "lie behind a log" and ambush a [pro se PCR applicant] with an unexpected [hearing]."); Howard v U.S., 743 F3d 459 (6th Cir. 2014) ("[Pro se PCR applicants should not have to] blunder into court without having performed basic research and preparation.")

South Carolina's PCR process has become nothing more than 'a sacrifice of unarmed prisoners to gladiators'. *See* U.S. v Ragin, 820 F3d 609 (4th Cir. 2016) ("While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators.")

Petitioner would also express at this point that counsel should be appointed to PCR applicants to assist the applicant in raising in if there are genuine issues of material fact or law existing in the PCR applicant's case

Petitioner did also at the hearing ask for assistance with the costs and expenses associated with the litigating of this case and also a reimbursement of expenses. Petitioner did inform the judge that motions regarding this matter were also pending. (Appx. I, pgs. 312, 485)

The Blindly Adoption and Signing of Verbatim Orders

Petitioner did also complain of the court's blindly adopting, verbatim, the Office of Attorney General's proposed orders without the judge taking the time to look through the orders and make an independent review of the case file to ensure that the order is a correct representation of the case. (See also Appx. I, pgs. 400-402)

Petitioner emphasized that the proposed orders contain unreasonableness, lack of proper facts, findings, conclusions of law, and failed to address all issues raised and adjudicate on all motions filed. Any factual findings and conclusion of law with regard to anything included within the PCR orders are those of the Office of the Attorney General, rather than of the judge.

See Aiken County v BSP Div. of Envirotech Corp., 866 F2d 661, 667 (4th Cir. 1989) (labeling the "near-verbatim adoption" of proposed findings of fact and conclusions of law "less than ideal"); Anderson v City of Bessemer City, 717 F2d 149 (4th Cir. 1983) (noting that the court had "criticized" the "verbatim adoption of findings of fact prepared by prevailing parties"); Jefferson v Upton, 560 US at 293-94, 130 Sct 2217 (same); and more recently in Burr v Jackson, 19 F.4th 395 (4th Cir. 2021) ([The

Court does] continue to "strongly criticize" the practice of verbatim (or close-to-verbatim) adoption of proposed opinions.")

Reese v State, 425 SC 108, 820 SE2d 376 (2018) (Judge adopting and signing the proposed order prepared by the Office of Attorney General rather than one which was proposed by PCR applicant's counsel, notwithstanding the Office of Attorney General's failure to address all claims. This was reversed by the Supreme Court of South Carolina.) The Supreme Court, in *Reese*, further emphasized its continually having to admonish the PCR courts in this state regarding its failures to ensure that PCR orders accurately reflect the record, arguments, and matters raised by PCR applicants.
See also Fishburne v State, 427 SC 505, 832 SE2d 504 (2019) ("Because a postconviction judge will ultimately be signing the order on an application for postconviction relief, the judge must carefully review a proposed order to ensure it includes appropriate findings of fact and conclusions of law as to all issues raised; once a proposed order is finalized, signed by the judge, filed, and served upon the parties, the parties should thoroughly review the final order to make sure all issues raised were adequately addressed, and if they were not, a timely motion for findings of fact and conclusions of law should be filed, requesting the postconviction court to address the appropriate issues.")

The court in *Fishburne* fails to reach the fact that even when an indigent pro se applicant reviews the proposed order and in turn "alerts" the Office of Attorney General and the PCR court of the order's deficiencies, nothing is changed in the order despite the deficiencies being brought to the attention of the Office of the Attorney General and the PCR judge. This is because if there were deficiencies within the order, they were meant to be there as this is simply a strategy of the Office of Attorney General which it has mastered. The Office of Attorney General does realize that its office does in-fact hold much persuasion over the PCR judges in this state, does have personal relationships, and continuous ex parte communications. This works to ensure that the PCR judge would always simply blindly sign the orders regardless of their deficiencies and leave it to the indigent pro se PCR applicant to fend for himself in attempt to explain the situation to courts who do not construe pro se pleadings liberally.

See also Robinson v State, 422 SC 78, 810 SE2d 32 (2018) (The South Carolina Supreme Court finds it troubling that a judge would sign an order which contains findings which were flatly contradicted by the record.)

Purposely Omitted Facts, Factual Basis & Uncontroverted Evidence

When a dispute as to facts exists, a PCR applicant is entitled to an evidentiary hearing as a question of fact is raised which can only be resolved by a hearing. This

is especial when those facts are not conclusively refuted by the record before the PCR court. See e.g. Robertson v State, 418 SC 505, 795 SE2d 29 (2016).

When the facts exist and the record clearly supports those facts of a PCR applicant's claims, the Office of Attorney General in making its order simply ignores both those clear facts and its supporting evidence (exhibits, etc.). Further, as such, the PCR order ultimately does not include proper facts and does fail to provide a basis for the denial of PCR due to those missing facts, and thus the reviewing court is left to speculate. The Applicant, in appealing, has no way of knowing how to construct an argument as the applicant has no way of knowing how the reviewing court will speculate.

See In re Treatment & Care of Luckabaugh, 351 SC 122, 133, 568 SE2d 338, 343 (2002) ("The absence of factual findings makes [the appellate court's] task of reviewing [a] court order impossible because the reasons underlying the decision are left to speculation.") (internal quotation omitted); Atkinson v Atkinson, 279 SC 454, 456, 309 SE2d 14, 15 (1983) ("Proper appellate review is extremely difficult, if not impossible where a lower court omits specific findings of fact to support its legal conclusions.")

This same troubling occurrence applies when the Office of Attorney General, judge, and clerk of court decline to perform the ministerial duties of scheduling motions, adjudicating the motions, and setting out the sufficient factual basis for a denial or grant of the motions.

See, See State v Tessnear, 257 SC 290, 185 SE2d 611 (1971) (South Carolina Supreme Court explaining, "A determination of whether the motions... should have been granted requires a review of the material facts upon which the lower court acted. Since the pertinent facts are not included in the record, we cannot consider these questions.")

QUESTION

1. Does the allowance of the Attorney General's Office to schedule all matters which relate to PCR actions violate Separation of Powers Doctrine and Due Process Rights guaranteed by the South Carolina and United States Constitutions?

ARGUMENT

As both Petitioner's current and prior PCR cases (2019-CP-11-0457 & 2017-CP-11-0486) clearly reveal; the allowance of the Office of Attorney General to schedule all matters which relate to PCR actions clearly violates separation of powers doctrine

and the due process rights of Petitioner as this allowance has clearly allowed the Office of Attorney General to act as a barrier to the rights of PCR applicants to be heard.

Petitioner's filings made in his PCR actions were ignored due to the Office of Attorney General's strategy of not scheduling them to be heard, the Common Pleas judge therefore failing to acknowledge and rule upon them. The Office of the Attorney General as the adversary, effectively controlled the case and ultimately the outcome of the case.

Petitioner's filings were ignored for months by the Common Pleas judge and Office of Attorney General and ultimately not ruled on. The Office of Attorney General would submit its filings and its filings would immediately be scheduled to be adjudicated upon. This is because the adversary / Respondent in the case in-fact schedules its own filings and maintains a direct open-door-policy with the judge ex parte. This allows the Office of Attorney to persuade the judge in ex parte conversation and have its matters acted upon by the judge in a matter of days. The inequities in Petitioner's PCR matters are clear and does shock the conscious. (See Petitioner's irrefutable exhibits which provide proofs of the same). See also State v Langford, 400 SC 421, 735 SE2d 471 (2012) (explaining that such allowance is unquestionably a violation of separation of powers.) Petitioner did in-fact write to the judge and ask for a copy of any and all communications which have occurred between his office and the Office of Attorney General with regard to this case, motions filed in this case, appointment of counsel, and scheduling in this case. (Appx. I, pg. 310)

QUESTION

2. Does the allowance of the Attorney General's Office to schedule motions and effectively make the determination as to whether or not motions will be heard or acknowledged violate Separation of Powers Doctrine and Due Process Rights guaranteed by the South Carolina and United States Constitutions?

ARGUMENT

When the Office of Attorney General refuses to schedule motions that are filed by PCR applicants, but rather allows and entrusts the Office of Attorney General who is the adversary in the case to schedule motions, this certainly violates the separation of powers and rights to Due Process of PCR applicants. It is absurd that this allowance occurs as no one would phantom that an adversary party in a case could ultimately make determinations as to whether the opposing party's motions, etc would be heard by the judge and ruled on or not.

The clerk of court has a ministerial duty to place all filed motions on the motion's calendar, file book, and motions docket. See Rule 79, SCRCP; Rule 79(e), SCRCP.

> (a) File Book. The clerk of court shall consolidate the calendars of civil actions in the circuit court and provide for the filing and keeping of papers with respect to civil actions in the manner provided in this rule. The clerk of court for each county shall keep a Calendar, hereinafter referred to as "File Book", relating to civil actions in the circuit court in which there shall be entered and cross-indexed all proceedings of a civil nature which are instituted in the circuit court civil court for the county or are appealed to that court from a magistrate's court, municipal court, other inferior court, or any administrative agency for which provision is made for an appeal to the circuit court. The clerk of court shall maintain only one file book for the circuit civil court as required by this rule.

Rule 79, SCRCP

> (e) Motion Calendar. In addition to the file book, each clerk of court shall maintain a motion calendar in such form as prescribed by the Office of South Carolina Court Administration. The clerk of court shall place on the motion calendar all pending motions and other matters requiring a summary hearing before the judge. The motion calendar shall contain the case number, date of request, name of the action, attorneys involved and the nature of the motion to be presented.

Rule 79(e), SCRCP

Also, the judge has a legal duty to rule on Petitioner's motions. The judge's act of ruling on filed motions is a ministerial duty. See City of Rock Hill v Thompson, 349 SC 197, 563 SE2d 101 (2002) ("[T]he Court could direct a judge to rule on a pending motion because the act of ruling is ministerial in nature.")

The judge also has a ministerial duty to determine whether or not an indigent PCR applicant will be granted counsel. Rule 71.1(d), SCRCP. The Office of Attorney General's unclean hands had effectively hidden Petitioner's motions from the judge.

QUESTION

3. What statute, court rule, or other authority does South Carolina's circuit court, circuit judges, and clerks of court rely upon that provides that the ministerial duties of making the determination as to whether or not an indigent PCR applicant shall be appointed counsel or not, the scheduling of motions, placing motions on the motion docket and calendar; are to be handed over to the Office of the Attorney General's Office?

ARGUMENT

The clerk of court has a ministerial duty to place all filed motions on the motions calendar, file book, and motions docket. See S.C. Clerk of Court Manual. See also Rule 79(e), SCRCP stating, "In addition to the file book, each clerk of court **shall maintain a motion calendar** in such form as prescribed by the Office of South Carolina Court Administration. **The clerk of court shall place on the motion calendar all pending motions and other matters requiring a summary hearing before the judge.**"

See also, Barnes v State, 433 SC 399, 859 SE2d 260 (2021) (The South Carolina Supreme Court taking "th[e] opportunity to remind the clerks of court of their ministerial duty to docket filings.") This duty is not discretionary. See 21 C.J.S. Courts §335 (2021). *Id*

The judge's act of ruling on filed motions is a ministerial duty. See City of Rock Hill v Thompson, 349 SC 197, 563 SE2d 101 (2002) ("[T]he Court could direct a judge to rule on a pending motion because the act of ruling is ministerial in nature.")

This Court should in-fact treat Petitioner's motions as they have been granted due to the Office of Attorney General and PCR court's dilatory actions. McDaniel v United States, 2:15-234-RMG (D.S.C. 2022) (The United States District Court, acting out of an abundance of fairness, treated motion which the court failed to rule on a "granted."); State v McDaniel, 320 SC 33, 462 SE2d 882 (1995) ("So long as the judge had an opportunity to rule on an issue, [] it is not 'incumbent upon... counsel to harass the judge by parading the issue before him again.") (citing Dunn v Coca-Cola Bottling Co., 311 SC 43 ,46, 426 SE2d 756, 758 (1993)

Determination As To Appointment of Counsel

The allowance of the Office of the Attorney General, by its very nature, to allow this office as the adversary / respondent in the PCR case to determine whether or not the Petitioner (PCR applicants) will be appointed counsel or not is shocking to the conscience as it is clearly a violation of separation of powers and due process rights as guaranteed by the State Constitution and United States Constitution.

Rule 71.1(d), SCRCP provides as follows:

> If, after the State has filed its return, the application presents questions of law or fact which will require a hearing, the court shall promptly appoint counsel to assist the applicant if he is indigent.

Rule 71.1(d), SCRCP

As Rule 71.1(d), SCRCP, states that if the application presents questions of law or fact the court shall appoint counsel to assist the applicant; this ultimately means that the Office of Attorney General is exercising in a judicial capacity as it looks and is the ultimate determiner as to whether or not questions of law or fact exist. The Office of Attorney General cannot make the determination as to whether or not the PCR applicant shall have counsel appointed unless it first makes the determination that no questions of law or fact exist. The Office of Attorney General as a member of the executive branch, should not be acting in a judicial capacity. Rather this is a ministerial duty of the judge. Importantly it should be noted that once the Office of Attorney General makes this determination, the Common Pleas judge doesn't take a second look. (See Appx. I, pgs. 400-402) Rather, the judge inherently trusts the Office of Attorney General, and thus simply blindly signs any pleading brought before the court by the Office of the Attorney General; thus blindly giving effect to the will of the Office of the Attorney General. The Office of the Attorney, in this regard, functions as the adjudicator in the case. See also See State v Langford, 400 SC 421, 735 SE2d 471 (2012) (explaining that such allowance is unquestionably a violation of separation of powers.)

Importantly it should be noted that it is this determination that also determines whether or not the adversary's / respondent's motion for summary judgment and / or motion to dismiss will stand. Further, notice also the Common Pleas judge's practice of accepting proposed orders from the Office of Attorney General then placing the original signed orders in the hands of the Office of Attorney General for the Office of Attorney General to deliver the original signed order to the clerk of court's office for filing and entering. (Appx. pgs. 103, 114, 444) The judge should not place an "original" signed order into the hands of the Office of the Attorney General, and then allow the Attorney General (being the Respondent / Adversary party) to assume the role of providing this original signed order to the clerk of court for filing and entering. (See Appx. Pgs 276, 443, 103, 114, 444) (See also Applicant's Exhibit P, reflecting the same.) (Appx. I, pg. 275) This is a direct violation of Rule 71.1(f), SCRCP, and Rule 77(d), SCRCP as the judge rather is to provide the original signed orders to the clerk of court who is then supposed to file, enter, and provide copies of the signed orders to the parties in the case.

Rule 71.1(f), SCRCP, states as follows:

> (f) Filing and Service of Order. The post-conviction relief judge shall submit the signed order or judgment to the clerk for filing and the clerk of court shall provide notice of entry of judgment and serve a copy of the order or judgment to the parties as provided in Rule 77(d), SCRCP.

Rule 77(d), SCRCP, states as follows in relevant portion:

> (d) Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by first class mail

upon every party affected thereby who is not in default for failure to appear, and shall make a note in the case file or docket sheet of the mailing.

[Also,] "In addition to the above, in post-conviction relief actions, the post-conviction relief judge shall submit the signed order or judgment to the clerk of court for filing and the clerk shall promptly provide notice of the entry of judgment and serve a copy of the signed order to the parties."

Rule 77(d), SCRCP

It is surely unreasonably to infer that the Office of Attorney General would make a motion to dismiss and / or a motion for summary judgment seeking to dismiss a PCR applicant's case; and then with the same sword determine that questions of law and fact exists. See Harleysville Grp. Ins. V Heritage Cmtys., Inc, 420 SC 321, 356-57, 803 SE2d 288, 308 (2017) ("[A] party may not use the same argument as both a shield and a sword.")

No provision, law, statute, nor other authority should allow the Common Pleas Judges and clerks of courts in this state to hand over their ministerial duties to the Office of the Attorney General. The judicial and executive branches should not mix nor exercise in the same capacity.

Abuse of Discretion Standard of Review as to the Determination Not to Appoint

Although Petitioner has found no case law in South Carolina which specifies that the determination as to the appointment of counsel to indigent PCR applicants is reviewed under an abuse of discretion standard; Petitioner does think however that this Court would find that this standard would be the proper standard of review.

Ellis v Davidson, 358 SC 509, 595 SE2d 817 (2004) ("For purposes of abuse of discretion standard of appellate review, an abuse of discretion occurs when there is an error of law or a factual conclusion that is without evidentiary support.") However, looking to other states to see how such a matter would be handled by its courts, Petitioner has found that other courts in-fact review such under an abuse of discretion standard. E.g. Gipson v State, 967 N.W.2d 370 (2021) ("[The Court of Appeals of Iowa] review[s] the PCR court's determination whether to appoint counsel for an abuse of discretion"); Green v State, 242 So.3d 176 (2017) (Court of Appeals of Mississippi applying an abuse of discretion standard as to the denial of appointment of PCR counsel);

As the judge failed to notice that he had discretion as to whether counsel would be appointed to Petitioner he did commit and error of law as his discretion was not used and therefore abused. Richardson on Behalf of 15th Circuit Drug Enforcement Unit v Twenty-One Thousand and no/100 Dollars ($21,000.00) U.S. Currency and Various Jewelry, 430 SC 594, 846 SE2d 14 (2020) ("A court that does not use discretion or recognize it has discretion when discretion exists commits an error of law."); Patton v Miller, 420 SC 471, 490, 804 SE2d 252, 262 (2017) ("[A] court's failure to exercise its discretion [] is itself an abuse of discretion.")

The record in this case does not reveal anywhere that the judge recognized that he had discretion nor does the record reveal that the judge exercised in his discretion. This would have been possible if the judge would have simply ruled on the motion to appoint counsel and provided reasons for not appointing. However, as the Office of Attorney General had determined that Petitioner would not be appointed counsel, the judge did not look over this by way of an independent review, rather he exercised in erroneous thinking that the Office of Attorney General's decision was the final decision in this matter and that he as the judge had no power to over-rule the Office of Attorney General's wishes in this regard.

QUESTION

4. Should Former Chief Justice, Jean Hoefer Toal's Administrative Order, Supreme Court Order No. 2008-10-06-01, RE: 'Appointment of Counsel in Post-Conviction Relief Cases Before The Circuit Court', be rescinded, as this administrative order serves as the catalyst for much of the Common Pleas PCR court's violations of Separation of Powers and of Due Process; as the order appears to be what the Court's lean upon in violating the Constitutional Rights of South Carolina's PCR applicants?

ARGUMENT

The answer to this question should be an emphatic YES! This administrative order serves as the catalyst for much of the courts' and Office of Attorney General's violations of separation of powers and due process as this order appears to be the common document which the courts lean upon in blatantly disregarding and violating the separation of powers doctrine and Constitutional rights of Petitioner and PCR applicants in general.

It doesn't take much to realize that this administrative order, as the catalyst, immediately began to prejudice PCR applicants as through this order, total control of the PCR docket and all matters which relate to the PCR were handed over to the Office of the Attorney General.

Through performing research and examining South Carolina case law, it is clearly revealed that no PCR applications which have been challenged by the Office of Attorney General as being successive or barred by the statute of limitations have been granted hearings. Again, this is because the judges seem to decline to take a second look but rather allows the Office of Attorney General to function in a judicial capacity as an adjudicator. (Appx. I, pgs. 400-402)

Petitioner would point out, as he has thoroughly explained in his Explanation, there are in-fact two (2) hearings which should be available to PCR applicants. (1) Procedural Questions Hearings, and (2) Merits Hearings.

A procedural questions hearing is not a hearing on the merits in an applicant's PCR application. Rather, this hearing is a one in which would determine whether or not the statute of limitations or successiveness, or other procedural defense the adversary / respondent makes should bar the PCR applicant. See McCoy v State, 401 SC 363, 737 SE2d 623 (2013); Gamble v State, 298 SC 176, 379 SE2d 118 (1989); and Coats v State, 352 SC 500, 575 SE2d 557 (2003).

The reason why these hearings are not being conducted is because the Office of the Attorney General is making the ultimate determination that no genuine issues of material fact exists. The Office of Attorney General accomplishes this by not acknowledging exhibits, motions, nor the facts which PCR applicants raise in the PCR application and memorandums. See State v Tessnear, 257 SC 290, 185 SE2d 611 (1971) (South Carolina Supreme Court explaining, "A determination of whether the motions... should have been granted requires a review of the material facts upon which the lower court acted. Since the pertinent facts are not included in the record, we cannot consider these questions.")

In re Treatment & Care of Luckabaugh, 351 SC 122, 568 SE2d 338 (2002) is also instructive as to the importance that rulings be made on filed motions.

The Office of Attorney General / adversary, does not refute the facts so that it can be said that a dispute with regard to facts exists. They are simply ignored along with any exhibits which are provided for the record as scintilla evidence and more than scintilla of evidence to support the applicant's claims and to defeat the summary judgment motion.

A hearing on the merits is a hearing with regard to the claims for relief the PCR applicant raises in his PCR application. See Roger v State, 261 SC 288, 199 SE2d 761 (1973); Chambers v State, 262 SC 202, 203 SE2d 426 (1974); Coardes v State, 262 SC 493, 206 SE2d 264 (1974); Delaney v State, 269 SC 555, 238 SE2d 679 (1977).

The actions of the court and Office of the Attorney General, in concert, does in-fact block Petitioner's access to the court and to justice in this case. Petitioner does understand that South Carolina's circuit courts have struggled with the need for the separation of powers doctrine and Due Process violations in this regard.

See State v Langford, 400 SC 421, 735 SE2d 471 (2012) (explaining that such allowance is unquestionably a violation of separation of powers.)

The Office of the Attorney General and the court seems to candidly violate the separation of powers doctrine and the Constitutional rights to due process, as they are aware that (1) it would be difficult for a pro se prisoner to explain what has been done, and (2) in a pro se litigant's attempt to raise such issues and argue the cumulative violations and affects of such, there exists a chance that the Appellate Courts would consider the pleadings too lengthy and ultimately think of the

wronged indigent pro se prisoner as simply one in which the court owes "no duty of consultation", and therefore simply decide to not hear the case.

Gary v State, 347 Sc 627, 557 SE2d 662 (2001) ("In the interest of fairness, counsel should be appointed to an indigent postconviction relief applicant when the state moves for dismissal on limitations grounds and the applicant raises an issue of material fact regarding the applicability of the statute of limitations.") Notice also in *Gary*, ("Remand of postconviction relief case was required for the appointment of counsel and an evidentiary hearing regarding indigent applicant's claim that the statute of limitations should be equitably tolled on ground that he simply filed in the wrong venue") Id.

Notice the issue in *Gary* would not be an issue that would be considered today as an issue of material fact or an issue of genuine material fact or law. The Supreme Court in Gary deemed this issue as one of material fact at that time because there was no South Carolina case existing wherein this question had been decided.

The facts and questions which Petitioner's case has presented are novel and does present issues of material fact and are of genuine material fact and law. The questions, facts, and issues surrounding the case at bar are of first impression and the PCR court has erred in failing to grant a hearing whereby the issues of this case would be fully adjudicated and decided upon, a full record developed as to the questions and proceedings, and future guidance be provided in the interest of certainty and judicial equity.

Petitioner has attempted to obtain declaratory and mandamus relief in these matters by seeking that the South Carolina Supreme Court would here and adjudicate upon these matters in the court's original jurisdiction, however, the court declined to do so. Those whom Petitioner claim against are judicial officers and are officers of the very same court in which Petitioner would have had to file an action for declaratory and mandamus relief; the officers of that court would be both parties of the case, the officer to file docket and file the action that is actually against them and also adjudicate on the very action that is against them as they are in-fact the heads and engines of the county circuit court.

This matter is in public interest as the practices which result from Former Chief Justice Jean Hoefer Toal's administrative order affects not only the Petitioner in this case, but many indigent PCR applicants as well. Thus, this court should make determinations which would protect the Constitutional rights of Petitioner in this case and which would also serve as future guidance in these regards.

South Carolina's PCR process has become nothing more than 'a sacrifice of unarmed prisoners to gladiators'. *See* U.S. v Ragin, 820 F3d 609 (4th Cir. 2016) ("While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to

gladiators."); Bauer v Summey, 568 F.Supp.3d 573 (2021) ("Conduct that shocks the judicial conscience in violation of substantive due process is deliberate government action that is arbitrary and unrestrained by established principles of private right and distributive justice")

See Heckler v Edwards, 465 US 870, 104 Sct 1532 (1984), quoting 81 Cong. Rec. 3268 (1937) (remarks of Rep. Michener) ("If," "when," and "[w]here the constitutionality [of Acts of the Legislature] is questioned, more than the rights of individual litigants in the suit are involved. The rights of all the people who might be affected by the laws are involved...") id., at 3265 (remarks of then Rep. Fred M. Vinson) (When the constitutionality of an Act of [the Legislature] has been drawn into question, that question "affects not only the litigants in the particular case, but it affects many others. It out to be decided right in the public interest.")

CONCLUSION

Petitioner seeks that this Court would make a ruling in this case as this case is certainly novel and complex and does present questions of law and of fact which are first impression issues. Petitioner prays that his pleadings are construed liberally and that such parts which may be construed interchangeably as either mandamus, declaratory, or post conviction relief matters – that this Court would simply rule in a way that adjudicates upon all issues in this case. Above all this is a post-conviction relief case and most important is that the issues herein and thereof this case are adjudicated and ruled upon.

Respectfully submitted, _____

Alonzo C. Jeter, III
PETITIONER / *pro se*

This 9th day of September, 2022.