

South Carolina Supreme Court  
Spartanburg County  
Court of Common Pleas

C/A #2021-CP-42-01473

Robert Heydman #330872  
Petitioner

v.

State of South Carolina  
Respondent.

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S.C. SUPREME COURT

243(C) Explanation

Now Comes the petitioner Robert Heydman #330872 in the above entitled case respectfully moving the Court with a prima facie showing that he is entitled to relief pursuant to Davis v. State, 381 S.C. at 607, 675 S. E.2d at 149. This 243(C) explanation will show this Court that the PCR Court erred by not appointing counsel when the state/respondent move to have his case summarily dismissed, and by not granting a PCR hearing, because genuine issues of material facts exist to warrant a PCR hearing.

This filing of the PCR application was filed after the petitioner received a letter from his trial counsel William MacPherson on November 18, 2020 that the State had an offer of 30 years on the table. See attached letter dated November 18, 2020.

Petitioner had wrote to MacPherson requesting any and all information about whether plea offers were extended to him. Respondent made its return requesting the application be summarily dismissed on October 13, 2021. The Asst. Att. General Chelsea F. Anorte submitted a proposed conditional order of Dismissal in the entitled case. See letter dated October 13, 2021.

Now comes the petitioner in this case respectfully submitting this 243(C) explanation in support of his PCR application that was denied by the Spartanburg County PCR Judge Grace Knire.

Petitioner request his 243(C) explanation be construed liberally and not held to lawyer standards.

## I Procedural History

The record before this Court will show that the applicant is presently confined in the South Carolina Dept. of Corrections pursuant to orders of commitment of the Spartanburg County clerk of Court. William McPherson represented the applicant while solicitor Barry Bannette and Jennifer Jordan prosecuted the case. On September 24, 2008, Applicant proceeded to trial before the Honorable Paul Birch and a jury. On September 26, 2008 Applicant was found guilty of murder (2007-65-42-4087) as charged and was sentenced to life in prison.

A timely notice of appeal was submitted on Applicant's behalf by way of an Anders brief. The S.C. Court of Appeals affirmed applicant's conviction on June 8, 2011, State v. Heydman, Op. 2011-UP-269.

The applicant agrees with the factual history on page #2 in its entirety of the

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conditional order of Dismissal / pertaining to the First PCR action (2011-CR42-2966)  
The applicant also agree with the recitation of the facts on page #3 of the Conditional order of Dismissal pertaining to the second PCR action (2018-CR42-3180) and the first Habeas Corpus action (0:21-cv-019 - DCC-PJG)

## II. Current Action before this Court.

In his current PCR application, applicant alleges he is being held in custody unlawfully on the following grounds of newly and after discovered evidence.

Trial counsel was ineffective for failure to communicate / convey a 30 year plea offer that was tendered by the state. See attached letter dated November 15, 2020 on PCR application

If a PCR applicant, as in the case at bar alleges specific instances of ineffective assistance of counsel and the record before the PCR court does not conclusively refute those allegations, then a question of fact arises that can only be resolved by a hearing. Deloney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977) (per curiam), when

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considering the state's motion for summary dismissal of an application for PCR, a court must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant.

Wilson v. State, 348 S.C. 215, 217, 559 S.E.2d 581, 582. Likewise, this Court must view the facts in the same fashion when reviewing the appropriateness of a dismissal.

### Actual Discovery

The applicant here filed his PCR action within one year after date of actual discovery of the facts alleged. See Letter dated November 18, 2020, S.C. Code Ann. 17-27-20(A)(4) and 17-27-45(C)

Applicant filed this PCR action on May 11, 2021 in the Spartanburg County Clerk of Court's office.

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There exist evidence and material facts not previously presented and heard that requires vacation of the sentence in the interest of justice. S.C. Code Ann. 17-27-20 (A)(4).

The fundamental defects alleged in this PCR action are standards that require establishment of a complete miscarriage of justice and an omission inconsistent with the rudimentary demands of a fair procedure. It would be a denial of due process to not give the applicant a evidentiary hearing on the above claim.

Applicant request this Honorable Court to appoint counsel pursuant to Rule 71.1(D) which provides if after the state has filed its return, the application presents question of law and facts in the case at bar, the court shall appoint counsel to assist the applicant. Counsel shall be given a reasonable time to confer with the applicant.

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Counsel shall ensure that all available grounds for relief are included in the application if necessary. As of date, the applicant have not been afforded counsel to assist in this case.

Applicant contend that Rule 21.1(D) SCRPC require the judge to appoint counsel for him or obtain his intelligent and knowing waiver of the right to counsel. Whitehead v. State, 310 S.C. 532, 426 S.E.2d 315

The Due Process Clause of the 14th Amendment of the U.S. Constitution protects citizens against state action. When the U.S. Supreme Court enunciates a rule based upon the 14th Amendment, that rule is binding upon state courts through the Supremacy clause. See Henry v. City of Rock Hill, 376 U.S. 84 S.Ct. 1042.

Applicant state that he learned of the existence of a 30 year plea offer by the state after receiving a letter from his trial counsel William McPherson. See attached letter date November 18, 2020 on PCP application

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A plea was never offered to applicant prior to trial, as the state would have you to believe on page #5, 1st paragraph. The attorney general have misstated the true facts of the letter. Had the plea offer would have been extended to him at that time or prior to trial, he would have accepted it. William MacPherson told the applicant that he didn't think he would accept the plea based upon his age. I have never signed a waiver of a plea offer, therefore it was never conveyed to me, nor was I told of the consequences of not accepting the plea.

The issue raised is considered newly and after-discovered evidence which should be heard in a PCR hearing because genuine issues of material fact exist to warrant a hearing with the appointment of counsel.

See McCoy v. State, 401 S.C. 360 S.E.2d 623 (S.C. 2013) also Coates v. State, 345 S.E.2d 557 (2003) pursuant to the "Discovery Rule" in accordance to S.C. Code Ann. 17-27-45(c).

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Applicant avers that he has demonstrated sufficient reason why his claim was not included in his prior PCR application or not discovered earlier. Applicant have stated sufficient reason. Based upon this factual dispute, a hearing is necessary to resolve this critical issue with the appointment of counsel.

Applicant has presented clear and convincing evidence to grant a PCR hearing by rebutting the Respondent's finding of fact and conclusion of law. Our South Carolina Supreme Court has made it abundantly clear that a PCR proceeding is still a constitutionally protected and statutorily provided mechanism to address a denial of fundamental fairness shocking to the universal sense of justice.

This Conditional Order of Dismissal is based upon an unreasonable determination of the facts in light of the evidence submitted to this Court. Latter v. Cooper, 566 U.S. 156, Missouri v. Frye, 566 U.S.

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See also Strickland v. Washington,  
466 U.S. 668.

Applicant have shown that his newly/after-discovered evidence<sup>(1)</sup> is such that it would probably change the result if a new trial was granted (2) has been discovered since the trial (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material and (5) is not merely cumulative or impeaching.

There is a reasonable probability that but for this error of counsel's, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

The applicant's alleged errors have not been previously litigated or waived in proceedings resulting in the conviction or sentencing or in any other proceeding. Allegations in applicant's PCR application must be deemed true until those issues/allegations are controverted by the state. Until allegations contained in verified application for PCR are controverted by the state, they are deemed to be true for purpose of determining whether an evidentiary hearing should be held.

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## Threshold Matter

The applicant further object to the conditional order of dismissal in its entirety because he was denied due process of law and a fair procedure for the following reasons:

As a threshold matter, the procedure followed by this Court denied Heydman an opportunity to have his post-conviction relief claim adjudicated by a judicial officer, S.C. Code Ann 17-27-80 (1976) require the RR Court to make specific findings of fact and state expressly its conclusion of law relating to each issue presented. See McCray v. State, 305 S.C. 329, 408 S.E.2d 841 (1991) and Pewitt v. State, 310 S.C. 254, 423 S.E.2d 127 (1992)

This Honorable Court did not do that, but rather delegated that responsibility to the assistant attorney general, Chelsea F. Marto. See attached letter dated October 13, 2021. This Honorable Court signed off on the proposed conditional order of dismissal after it was submitted by Marto.

The reasoning in the Conditional Order of Dismissal is entirely that of an advocate and not an independent judicial officer, which violates the separation of powers S.C. Const. 1 § 8. Applicant was not given the opportunity to submit a proposed conditional order of Dismissal. That is why counsel should have been appointed to assist the applicant in this case.

Our South Carolina Supreme Court strongly encourage PCR Judges to draft their own findings of fact and conclusions of law, Hall v. Catoe, 601 S.E.2d 335, 341 (2004). As a result of the error, the conditional order of Dismissal reads like an advocate trying to save the conviction and/or sentence. That a judicial officer safeguarding the rights of litigants. State v. Langford, 400 S.C. 421, 429, 735 S.E.2d 475 (2012)

The Conditional order of Dismissal is a verbatim copy of the attached general proposed conditional order of Dismissal. The wholesale adoption of the states advocacy position underscores the lack of judicial independence in this process. The need to grant a PCR hearing with the appointment of counsel is apparent.

Applicant Heydman would have accepted the plea offer had it been afforded to him through effective assistance of counsel. The applicant can demonstrate that a reasonable probability the plea would have been entered without the prosecution canceling it. There is a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of 30 years which is less prison time. Blower v. United States, 531 U.S. 128, 203, 121 S. Ct. 696, any amount of additional jail time has Sixth Amendment significance. Strickland v. Washington, 466 U.S. 668, quoting Davie v. State, 381 S. C. at 607, 675 S. E. 2d at 419.

Whatever the terms was, inherently prejudicial because the deficient conduct prevented the applicant from making an informed decision. Bell v. State, 265 S. E. 2d 4.

The applicant has established a prima facie case of newly discovered evidence.

Conclusion

The petitioner have provided this Honorable court with specific reasons factual and legal why his PCR application should not have been dismissed by the PCR Court.

Petitioner is using portions of his objection to the Respondent's Conditional Order of Dismissal. Petitioner request this Court to Remand his case back to the Spartanburg County Common Pleas Court for a PCR hearing with the appointment of counsel to assist in this case.

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