Case #'s

- Court of common pleas (P.C.R.)
  2017-CP-10-00272
- Court of appeals
  2019-000184

I beg for indulgence
it's a quick 30 minute read

please & thank you

September 11 2022
(Case #s on the back)

My name is Chad Stalnaker
#369754

A prelude to the following petition to the Supreme Court of South Carolina for review of the Court of appeals denial to entertain a writ of certiorari. There is a true miscarriage of justice which needs attention. I beg the courts indulgence to just review the following petition - I know the Court is busy but this is truly a constitutional violation.

Also I do not understand all the rules. I do not have an appendix through no fault of mine. I wrote the clerk of Court in Charleston SC to request the transcripts & record - weeks ago. I informed them I only had 30 days to respond & just this week it was transfered to the Veteran's program at MacDougal & still do not have the record/transcripts to make an appendix. I have cited the references & quotes with the page #s. I assume" you" will be able to obtain the appendix for the writ of certiorari previously submitted to the courts. I have also tried to write accurately with brevity & clarity. I am but a layperson with no counsel, just me. I humbly ask for latitude in regards to me not having the # of copies of the petition, or appendix - I also am happy to pay a filing fee I just dont know what it is or how to do so. I've only read rule 242 I believe it is about appealing the decision of the writ. This is not for exhaustion purposes. It is in regards to the errors of the inferior courts. Again I humbly asks for your time in this matter. If you please read my pages that do not exceed 25 pages. You will see the constitutional infringement. Thank you

Statement of Case

Petitioner is cursently a prisoner at MacDougall Correctional Institution. A timely P.C.R. application was filed. The application, inter-alia raised numerous claims of ineffective assistance of counsel. The application was dismissed after an evidentury hearing, by way of written order. Petitioner then filed a timely petition for a writ of certiorari through appointed counsel, Taylor Gilliam. The Supreme Court of South Carolina transfered the case to the Court of Appeals. The petition attacked the voluntariness & inteligibleness & understanding of petitioners guilty plea which was rendered due to ineffective assistance of trial turned plea Counsel. Petitioner was indicted for attempted murder & possession of a weapon during the commission of a vident crime by a Charleston, South Carolina grand jury in September 2014. Petitioner was first represented by indigent defense attorney Benjamin Lewis. Petitioner relieved appointed counsel & retained private counsel: Stanley Jastkiewicz who brought in William Runyon JR. Self defense, Stand your ground, the castle doctrine & protections of persons & property was petitioners defense; wanting to testify to prove his innocents. The trial began & after 3 days the state rested it's case - which was anything but overwhelming. The State presented no evidence of attempted murder, just the testimony of several individuals whom all had been drinking & intoxicated - including the alleged victim. All their statements before & during the trial were inconsistent & their testimonies were conflicting. Once the state rested petitioners Counsel moved for a direct verdict using a case for mutual combat (Avery). But the case was for support in the situation of one of the parties to die. In the case at hand no one died ∴ the judge denied the motion. Next counsel from both

Sides met in Chambers. The State wanted to offer a plea deal. The deal was that petitioner could plead guilty to the lesser included offense of attempted murder being assault & battery of a high & aggravated nature & the possession of a weapon during the commission of a violent crime. Petitioner discussed the consequences of a guilty plea with his counsel, with his father, mother, & girlfriend all present for that conversation. Petitioner asked his legal counsel, several times, what it ment to plead guilty to ABHAN & the weapons charge. The plea resulted in a sentence of 10yrs for the assault & 5 years for the weapon ran consecutive - for a total of 15 years. In petitioners P.C.R. hearing & application & in petitioners petitioner for writ of certiorari he contends that his trial turned plea counsel informed him that he would be eligible for parole, that he would serve a non-violent sentence, that he would be eligible for work release & that he would serve 55 to 65% of the sentence but it could be worked down even further with good time, work credits & education. Such is grossly inaccurate & wrong. In 2009 (the year) & befor ABHAN was parole eligible, a non-violent sentence which could earn good time & work credits but in 2010 that all changed with the Omnious crime reduction & sentencing reform act. Petitioner's trial was held in 2016 after the law had changed. Petitioner asserts that his legal counsel failed to properly inform him of the legal consequences of his plea after asking several times, which could of so easily been discovered & read by simply reviewing the statute for petitioners charges. South Carolina Code of laws § 16-1-60 defines Assault & battery of a high & aggravated nature as a Violent crime. Section 16-3-600(B)(3) a person

who violates this subsection is guilty of a felony & upon conviction must be imprisoned for not more than twenty years. South Carolina Code of law § 24-13-100 "definition of a no-parole offense; classification. Under South Carolina law a No-parole offense means a Class A, B, or C felony... A No-parole offense is one in which a prisoner must serve at least 85% of the actual sentence of imprisonment imposed." South Carolina Code of law 16-23-490 - additional punishment for possession of a weapon during the commission of a violent crime "must be imprisoned five years in addition to the punishment provided for the principle crime - the person sentenced under this section is not eligible during this five year period for: parole, work-release or extended work release. The five years may not be suspended & person may not complete his term of imprisonment in less than five years pursuant to good time credits or work credits."
South Carolina's legislation has engrafted an extra penalty for violent offenders $ for those who possessed a weapon during that crime. - a direct consequence of being Statutorily ineligible for parole. It is easy to [redacted] understand that a lawyer may say one is eligible for parole but that it's not a consequence that need be advised because the discretion of ascertaining parole is left up to the parole board. There is a grave difference in parole eligible & being Statutorily ineligible for parole in due to the Statute & legislation which is very simple to obtain ~~to obtain~~ & site.

The South Carolina Court of Appeals entered an order almost four years later on August 19 2022 denying Certiorari. This appeal/ this petition is to the Supreme Court of South Carolina not for exhaustion purposes but to humbly ask this court to review the decision of the court of appeals & the decision of the P.C.R. courts

dismissal. The inferior courts clearly missinterpreted the facts & have eskewed their judgements in contradiction of 4th Circuit precedent. I ask that the Supreme Court review this case & correct the miscarrige of justice that petitioner has received

Summary of argument:

Petitioner Chad Stalnaker argues that he is entitled to relief. That his constitutional rights were violated in due to ineffective assistance of counsel & due process. This violation has caused significant prejudice. Had petitioner been properly advised that upon a plea of guilty that he would be statutorily ineligible for parole when he asked counsel about parole & consequences then he would not have plead guilty but continued the trial & testified. Petitioner argues that the P.C.R. Court misrepresented the facts & made assumptions opposed to applying the conclusion of law. Petitioner submits that the positive inaccurate & [redacted] lack of information provided by defense counsel falls below the objective standard of effective assistance of counsel. Petitioners attorneys over-looked & chose not to research a very easily, accessible & published State law & [redacted] thus is shocking to the conscience. The fact that Counsel neglected to produce accurate & correct information upon request of petitioner in regards to his guilty plea violated his Sixth Amendment right. Counsel's performance was undeniably deficient & adversely affected petitioners decision to plead guilty. Had counsel provided the correct & proper advice the outcome of the trial would of been substantially different.

Strickland v. Washington 104 S Ct 2052 (1984) - Petitioner contends that his attorney's actions violated the gross misconduct standard utilized by the United States Court of Appeals for the Fourth Circuit in Strader v. Garrison 611 F 2d 61 (4th Cir 1979)

The Courts have long recognized that due process requires a defendant to make a plea that's voluntary & with knowledge of the relevant circumstances & likely consequences. The role of the attorney

in the course of the defendant's decision centers on providing reliable guidence concerning the applicable law. Only then can the defendant knowingly & intelligently balance the merits & risks of the possible choices. An attorneys misadvice can lead a defendant to take actions which would not have been taken if correct information was available. In O'Tuel v. Osborne the 4th Circuit followed the Strader reasoning, holding that a guilty plea induced by reliance on gross misinformation was constitutionally invalid. In O'Tuel the attorney failed to discover an amendment to the applicable statute for parole eligibility. Consequently the attorney misinformed the defendant that he would be eligible for parole only after serving ~~twenty~~ ten years when in fact the defendant would be eligible after serving twenty years. In both Strader & O'Tuel the Fourth Circuit described the attorneys advice as gross misinformation. Seriousness of misconduct can not just be calculated by simply counting the number of years in prison which the attorney's mistake cost the defendat. In Hill v Lockhart & in Strader neither attorney consulted the publish law applicable. It is this failure to do minimal research which justifies labeling the attorney's conduct as gross misconduct. In United States v. ex rel Hill & Terrullo the defendant's attorney had allegedly misrepresented the applicable parole statutes that governed the defendant's minimum sentence. In commenting on the attorney's mistake the court said that misinformation about a statutory minimum sentence is no less demonstrative of counsel's incompetent acts nor necessarily less significant to a defendant's decision to plead guilty, than an error about a statutory maximum. There is a distinction

between gross information & incorrect predictions. In 
Lambert V. United States the court distinguished an attorney's incorrect judgement in predicting a probable parole eligibility date from those situations where counsel could have readily obtained correct information, based on published parole statutes. There is a difference between misrepresentation of the law & predictions of counsel. Expressing hope of what a sentence might be as expressed hope of leniency rather than representations concerning the law. United States V. Tweedy reasoned that the record in a state proceeding may only represent procedural formalities without reflecting the actual basis for the defendant's decision to plead guilty. The fact that the defendant enters a plea & answers the court that no promises have been made, should not be conclusive. The defendant may have felt that the court expected such assurances. As well a defendant may not consider the explination of consequences of a plea as a promise but yet the actual effects of his plea. Such things as accrual of good time or administrative charges, however do not involve questions of law on which a defendant would look to an attorney for guidence. With respect to publish law however a defendant would be acting reasonably in relying on advice received from counsel. Affirmitive misadvice resulting from an attorney's failure to read published statutes falls below the objective standard of reasonableness, shocking the conscience with gross misinformation. & A guilty plea ∴ cannot be considered volumtary, inteligible or understanding.
Hammond V. United States 528 F.2d 15 (4th Cir 1975) - the plea of a criminal defendant that has been misinformed can be said

to be both involuntary & unintelligent. The simple fact that the defendant was misled by erroneous advice when the misadvice of the lawyer is so gross as to amount to a denial of the constitutional right to effective assistance of counsel - leading the defendant to enter an improvident plea leads cause to striking the sentence & permitting a withdrawl of the plea - the only necessary consequence of the deprivation of the right to effective assistance. Deprivation of the constitutional right cannot be left unredressed. When it has occasioned the entry of a guilty plea, the irrevitable redress is an order striking the plea or the release of the prisoner. Though parole eligibility dates are collateral consequences of the entry of a guilty plea of which a defendant need not be informed if he does not inquire - when he is grossly misinformed about it by his lawyer & relies upon that misinformation he is deprived of his constitutional right to effective counsel. When the erroneous advice induces the plea, permitting him to start over is the imperative remedy for the deprivation of constitutional rights.

Argument

The petitioner (Chad Stalnaker) was charged with attempted murder & possession of a weapon during the commission of a violent crime by Charleston County in 2014, went to trial in 2016. After three days the State rested its case, then in turn the State offered a plea deal. The State offered a plea of guilty for the lesser included being assault & battery of a high & aggravated nature & the weapons charge. Petitioner plead guilty based upon his attorneys advice & received a sentence of 15 years - 10 years for the assault & 5 years for the weapon ran consecutively. However, according to petitioners attorney Mr. Runyon, he exclaimed that petitioner never received a full explanation of the sentence he would receive. [P.C.R. App. 400 ll. 12-25; 401 ll. 1-25; 402 1-7]

400 ll. 12-22 Q. Did you (defendants trial/plea counsel) have any conversation with him (petitioner) about whether or not he would have to serve 55% of the [redacted] sentence or 60%...

A. There was no conversation of what he would get because he could -- he could get the weapon charge stacked on top. And of course we didn't have any -- I have to say this. Judge Young never said this is my usuall practice or this is what I'm going to do or this is what I've done in the past. He just said here's the deal. He said I will take a plea.

401 ll. 1-25 Q. As far as whether or not this was a serious offense. 85% time did you have this conversation with Mr. Stalnaker

A. I do not have an independent recollect. We talked about that most probably but I can't sit here & tell you today that I recall specifically that conversation

Q. Mr. Stalnaker testified that you told him it would be

(continued)

401 11. 11-25 55 percent time or he would have to serve about six years if he got a ten year sentence. Do you recall that?

A. No I don't recall that because there was no way to say what he was going to get.

Q. But as far as the percentage of time that he would have to serve?

A. No, because one of the things which I recall telling him is what the Judge tells you may be what statutorily it says but when you get to the South Carolina department of corrections they have this strange computer that figures it out much, much differently. And so I don't think I've ever told anybody 55% of the time where you have two sentences that may be run consecutive because it just can't work that way as I recall. And if you check with the South Carolina department of

402 11. 1-7 corrections & the South Carolina Probation & parole office they had two different companies do their programming for figuring times. And so you can't really tell somebody 55% of the time or 65% of the time. And then if you're talking about consecutive sentences who knows

Counsel's testimony clearly shows how deficient, unintelligent, & how ineffective he truly is.

The portion or calculation of sentence is not amorphous or incalculable - in absolute fact it is to the contrary. The Statutory Scheme in South Carolina describes precisley how various offenses will be served in the department of corrections. An attorney can

determine whether an offense is parole eligible, whether a client will be required to serve 65%, 85% or day for day. Of course an attorney cannot guarantee that an individual would be CPS granted parole but it is within trial counsel's right to advise petitioner whether the offense was at a minimum even eligible for parole. Individuals serving a sentence for parolable offenses accrue 20 days per month of good time credit (S.C. Code of Law Ann § 24-13-210) — For offenses ineligible for parole only 3 days per month of good time can be earned. (S.C. Code of Law AA § 24-13-230) For earned work & edveation credits parolable offenders can obtain a maximum of 180 days per year. Offenses ineligible for parole are only authorized a maximum of 72 days per year. Violent sentences are non parolable & 85% as is ABHAN which petitioner plead to & the possession of a weapon during the commission of a violent crime is a no parole offense & is a 5yr day for day sentence. Petitioners sentence is very easily calculable whether consecutive or concurrent - he would never be eligible for parole. If petitioner received 10 years for assault & the weapons charge is a mandatory 5 years - concurrent would be 8.5 years if consecutive petitioner would do 5 years then 8.5 years = 13.5 yrs. (No computer or calculator necessary). All the advice petitioner sought was easily, very, very easily obtainable through a quick read of the legislation & the Statute of the charges.

Petitioner explains that his counsel had informed him that he could plead to ABHAN & the weapons charge. Petitioner asked his attorney several times what it all meant. Petitioner plainly sets forth what he was advised of by his

(12)

App 357 ll. 12-22 Counsel: Petitioner was told that he could plead guilty & counsel pronounced it as meaning that he would do about 65-55% of the time sentenced to, that he would be parole eligible, that his sentence was not serious, that he would be non-violent & eligible for work release. Present during this conversation was petitioners mother, father & girlfriend. Counsel Runyon confirmed that petitioners family joined in the plea discussion. (App [redacted] CPS [redacted] 4. [redacted] I (App 402 ll. 8-23)

Q. Do you (petitioners counsel) recall having a conversation with his (petitioner) father

A. I don't recall specifically the conversation but I do recall having Chad's dad was present because he was a potential witness. And the state wanted... we wanted the state's witnesses to be segnestered, they wanted our witnesses to be... So Mr. & Mrs Stalnaker spent most of the trial sitting in the hallway.

Q. But [redacted] CPS were they present when conversations were going on about Chad taking the plea?

A. Part of them. I don't recall them being present all the time but I can tell you that when it became clear that Chad was probably going to take the plea they came in because they needed to be part of the conversation. Petitioners father testified at P.C.R. relevant & specific details echoing the testimony of petitioner as regards to what was advised of to be the consequences of the plea: 55-65%, parole eligible, work release eligible. The PCR court inexplicably concluded that petitioners father was not present for plea discussions: "And there

is no indication that [petitioner's father] was a part of the confidential conversations that would have taken place between he & his counsel & I would not expect that to happen because it would vitiate privilege & it would not make sense." This all goes to show how the P.C.R. judge misconstrued the facts to rule against petitioner. Counsel Runyon openly admits that a conversation in regards to petitioners plea took place, though he states he can't remember all the specific details he does testify further:

Q: Just regarding his (petitioner) pleading, did you (counsel) have a specific conversation with him about what his parole eligibility would be?

A: No, I can't recall a specific conversation about when his parole eligibility would be. [CPS] I'm certain that someone would probably say can I be paroled... but I don't recall that having come up; and particularly not in a situation where you might have a consecutive sentence

Q. But you said somebody might have asked could he be. Did he ask whether or not he could be paroled?

A. I don't recall. I honestly don't recall. But if you want to know the honest truth he probably did. I don't recall what the question was & I don't recall what my answer was.

Q: Okay.

A. But he probably did

I apologize to lose my legal formality for a moment - but that's like absolutely crazy! Counsel Runyon clearly testifies

that I, the petitioner asked about parole. It's so easy to see that a conversation took place where I asked about parole. Counsel had an affirmed duty to advise me if I inquired. Defense Counsel may of not necessarily ment to have misinformed petitioner. For as to what petitioner states: Counsel advised he would be non-violent, parole eligible, 65% or less, eligible for work release. Counsel would not have been wrong had it been before the year 2010 when the Omnious crime bill took effect. Before that ABHAN was non-violent, 65%, parole eligible & eligible for work release. Petitioners trial occured in 2016. Trial Counsel was & is quite elderly & often admits, candidly that he cannot remember many things. Is it so hard to belcive that counsel either wasn't anware, or did not know the law had changed. Still, yet the information that petitioner should of properly been advised of is not hard to find or read, it is the exact statute of the crime

As noted in the Order of dismissal, by the P.C.R. Court - assault & battery of a high & aggravated nature is classified as a violent crime (App 584-585) See: also S.C. Code Ann. § 16-1-60 = ABHAN carries a maximum sentence of twenty years & is a lesser included offense of attempted murder. S.C. code Ann § 16-3-600(B)(1); S.C. Code Ann 16-3-29 = Because ABHAN contains a maximum sentence of twenty years, it is a no-parole offense. S.C. Code Ann § 24-13-100. ∴ Trial Counsel could have easily determined that the offense was not eligible for parole & advised petitioner

accordingly. At the evidentury hearing instead of noting the relatively simple method of determining whether an offense is parole eligible, both trial counsel & the P.C.R. court indicated that such matters were left up to the department of corrections. The P.C.R. court incorrectly concluded that because attorneys do not generally make promises regarding sentencing, it did not occur in this case: "Nobody has a crystal ball. That portion or any calculation of sentence is within the sole regulatory authority of the department of corrections. And I don't know lawyer that makes promises or guarantees to a client as to how something is going to be calculated. So I do not find the testimony of petitioner to be persuasive"

Again it's baffling how the P.C.R. court can state such when I have certainly established how easy it is to calculate a sentence - there is NO need for a "crystal ball" these decisions are not left of to the D.O.C. but are legislative matters wrote in "Stone" as statutes. Nonetheless the PCR court mischaracterized petitioners assertions in order to rule against him: "I don't know any defense lawyer that does that because first of all you can't guarantee what a judge is going to do especially when there is no recommendation or negotiation. And you certainly can't guarantee what an administrative body that being the D.O.C. is going to do." the P.C.R. judge stated & continued "The record does not support & I find credible both Ms. Runyon & Mr. Jaskiewicz's testimony that they would not have made any representations regarding calculations of sentence or any guarantees to him." And I, petitioner don't keep

meaning to beat a dead horse but all those calculations & said guarantees are all so easily available to find & are concrete in their wording. They are definitive law - statutorily defined. Counsel's performance was way beyond defective & ineffective for failing to properly inform petitioner the direct consequences of his plea. For he was/is 1850% completely ineligible for parole for his entire sentence in due to his guilty plea. Petitioner asked his Counsel several times what the consequences would be & Counsel provided incomplete & erroneous advice which petitioner relied on as deciding to plead guilty. Petitioner testified that when he plead guilty he did not know: that he would be ineligible for parole, that he would be required to serve 85%, that Counsel misinformed him. And it's typical that most Circuit Court judges are going to tell a defendant that they understand that a charge is a no-parole offense & that it is a strike offense, a serious violent offense. There was none of that conversation done in this case. There is no reason to think that petitioner would have had any understanding of the consequences of his plea.

Petitioner also understands that error alone may not be enough to raise the constitutional claim & further asserts he has been severely prejudiced. Had he been advised that he would be violent 85% with no parole he would of never plead guilty & instead continued the trial & testified. Petitioner has always held that he wanted to testify. Petitioner has always believed to be innocent of the crime charged & had/has a very strong case for an aquittal.

Petitioner wanted to testify, wanted to tell his story of what happend. That he was Standing his ground, protecting his girlfriend & his home. Early on in the case, when petitioner retained Mr. Jastkowice & Mr. Rinnyon they talked about possible defferses & all agreed that Stand your Ground & protections of persons & property were very fitting & how they would proceed in trial. Mr. Jastkowice had asked petitioner if he would be willing to plead guilty to anything. Petitioner explained that he believed he was innocent & did not wish to plead guilty. Counsel asked if he would be willing to plead to a 10 year sentence. Petitioner sternly Stated he did not want to plead to 10 years but he would consider five years, for [redacted] if he was found guilty he could be facing 35 years. (Counsel's notes - See: App. 11. 437 17-25; 438 1-25; 439 1-6) Defense Counsel had Specifically recorded in his notes in regards to that plea discusion. Counsel also testifies that "Chad (petitioner) was definetely on the go for a defense of self-defense or defense of a third person" - Petitioner contends that early on he did not know anything about % of time or violent verse non violent. He believed that a plea of 10 years ment 10 years day for day. & he was not willing to plead to Such but would consider five years. Ultimately he wanted to testify. There was no evidence of attempted murder. There was no evidence of any intent not specific, not implied, not general. Petitioner States he was scared for this would be the first time he or anyone in his family - immediate or extended had ever been in such a situation, so serious that a jury trial was needed. Not knowing how the legal & justice System

work & was terrified of an extended prison term. Recent events in Charleston S.C. like dylan roof shooting up the church & Michael Slagger shooting that boy in the back were both seen as racial crimes, which they were & both of those trials surrounded petitioners. Petitioner is a white man who got into a fight with a black man but there was absolutely no racial motivation. It was just a fight. the alleged victim was severly intoxicated & petitioner was scared & that was it. But with all the CPS [redacted] racial tensions in the community petitioner would of been willing to plead to a minimal sentence of five years or less. At trial when petitioner asked his counsel to explain what the plea consequences would be & counsel advised that the judge would most likely sentence petitioner to 10 yrs on the assault but that that would be a non-violent 65% or less time served; depending on work & education credits petitioner could work it down to 41%. Those calculations fell in line with petitioners acceptance of a possible plea. Further petitioner contends that he was advised he'd be eligible for parole & believed he would be a perfect CPS [redacted] individual for parole. His reasoning was simple: he had always had a job & been a hardworking, tax paying pilar of his community. He had served diligently in the military just as all his family has, he had/has a great support system & a great family who was there for him. And he believed he would be a role model inmate. Parole eligibility was a major selling point to petitioner.

Now a question: why would petitioner take an open plea of up to 25 years verse testifying & being subjected

to 35 years. If one were to get 25 years for a guilty plea do you seriously think that 35 years it that much more worse(?) but having the chance of an aquittal - a good chance at an aquittal. It's bet. If you get 25 years, ten more years is nothing. Why not just "roll the dice" esspecially when like petitioner the defense has a strong case & a high probability of an aquittal. 25 years is a quater of a life. No reasonably sane person would plead to a possible 25 years, when the maximum if found guilty would be 35 years, & if they had a strong case & believed they were innocent. No one would take that plea. Unless, there was some sort of enticement, something more. That enticement for petitioner was easily the parole eligibility, a non violent sentence at 65% to 41%. Hell 41% of 25 years is 10.25 years & being eligible for work release. It makes no sense to plead guilty also when one could just be convicted of the lesser included offense. Petitioner could have testified & the jury could have been easily charged with the lesser included of what petitioner plead guilty to. It just doesn't make any sense. No reasonable person would do such unless there was that something more to be part of the plea deal as petitioner contends there was. Petitioner truly believed in due to his attorney's advice that he would be parole eligible & non-violent 65%-41%. Had petitioner been properly informed of the consequences of his plea he would never had plead guilty but instead continued the trial & testified. The States case was not strong, the evidence was all inconsistent testimony, none of it was even close to overwhelming. The alleged victim gave numerous statements before the trial & during that he didn't know what happend, that he couldn't remember

that he was extreamly intoxicated. The alleged victim states he doesn't even know if he threw the first punch or not but that he could have. He also admits to leaving petitioners residence after the first altercation & then returning back to the scene. The other witnesses tell varying stories of similar events but as alcohol played a major role in all the eyewitnesses their statements before & during trial were inconsistent & contradicting. That was all the evidence presented. I never pursued the alleged victim after the confrontation but instead had been the one to get 911 & the medical emergency team contacted and on site & told them that the alleged victim had run down the street & which way he went. I never made any representation to wanting to hurt the alleged victim. The Charleston Chief of police had even admitted that the alleged victim had been aggressive & confrontational with him, that he was drunk & hostile just 30 minutes before petitioner had encountered him in front of petitioners residence. Standing my ground & protection of persons & property has always been my defense. The trial counsel admits petitioner wanted to testify to prove his innocents, that he would have to testify to prove his defense. Petitioner is by no means a career criminal, this was really his first serious offense. He had a good chance to win his trial. He was very emotional, & unknowing how everything worked. Had counsel properly informed petitioner he would of never plead guilty to such a charge as ABHAN. In effect at the time of petitioners plea the State law governed the penalty of ineligibility for parole for violent crimes. Petitioner contends he sought the facts of the consequences of his plea & counsel erroneously informed

him that he would be eligible for parole, he was most assuredly never advised that he would be statutorily ineligible. It's just so crazy because the information needed to inform petitioner was so easy for counsel to obtain as it was the law, the legislation not some secret & complex mathmatical equation that several computer programs with a crystal ball in the evil castle of S.C.D.C. dictates as the P.C.R. judge per say stated. Counsel Runyon admits that petitioner inquired about parole eligibility & the consequences of his plea before he plead & even though counsel couldn't remember every single detail, he still assured the P.C.R. court that such a conversation took place. The United States court has stated that a plea cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts Johnson V. Zerbst 304 US 458, 468 (1938).

The critical importance of petitioners reliability on counsels advice cannot be ignored. The P.C.R. court surmised the facts incorrectly, that petitioner could not be informed of such calculations & parole eligibility or what % one may actually serve - which is completely wrong of the P.C.R. court. The P.C.R. court mischaracterized the law to rule against petitioner. Petitioner is extreamly prejudiced by the deficencies of his legal counsel. Petitioner has shown how he was prejudiced & the P.C.R. court erred in denying relief & the court of appeals failed to correct such error. Petitioner should have his conviction vacated or at the very least be allowed

to withdraw his plea. The United States Court for the 4th Circuit regards incompetents of an attorney as one who fails to accurately inform a client contemplating a plea that he will spend less time incarcerated than the published law mandates.

The 4th Circuit holds: a defendant who is ineligible for parole statutorily MUST be advised by Counsel otherwise counsel is ineffective.

Cuthrel V. Director Patuxent - direct verse collateral consequences - parole ineligibility is a direct, automatic, instant result of a guilty plea

Conclusion:

It is well settled that the validity of a guilty plea is determined by 'whether the plea represented a voluntary & intelligent choices among the alternative courses of action open to the defendant North Carolina V. Alford 400 US 25, 31, 91 S Ct 160, 164, 27 L Ed 2d 162 (1970) see: Boykin V. Alabama 395 US 238, 89 S Ct 1709, 23 L Ed 2d 274 (1969). Moreover where a defendant enters a plea on the advice of counsel: the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases.[2] Hill V. Lockhart 474 US 52, 56, 106 S Ct 366, 369, 88 L. Ed 2d 203 (1985). (citing McMann V. Richardson 397 US 759, 771, 90 S Ct 1441, 1449 25 L. Ed 2d 763 (1970). Announced prior to

petitioners plea Hill adopted the two-part Strickland test for assessing challenges to guilty pleas based on ineffective assistance of counsel. [See: Hill 474 US at 58, 106 S Ct at 370] Under that test an attorney's representation is ineffective if it falls below an objective standard of reasonableness. Id. at 57, 106 S Ct at 369. Thus the question presented here is whether the failure of the attorney to advise petitioner of his statutory ineligibility for parole prior to the plea falls below an objective standard of reasonableness. - It was settled before as is now that failure to advise on the effects of parole, alone does not render the representation constitutionally ineffective see: Strader v. Garrison 611 F.2d 61, 63 (4th Cir 1979) But significantly courts have drawn a sharp distinction between such failures & the failure to advise a defendant before a plea where (as here in petitioners case) the ineligibility is a direct consequence of the plea. See: Bell v. North Carolina 576 F.2d 564 (4th Cir 1978); Cuthrell v. Director Patuxen Inst. 475 F.2d 1364 (4th Cir 1973) Paige v. United States 443 F.2d 781 (4th Cir 1971).

Consider for example the circumstances at bar, petitioner, prior to his plea might reasonably thought that parole would render his incarceration exposure to 1/3 or 1/4 of the sentence. Thus he might reasonably claim to be unfairly surprised to learn that he must serve 13.5 years in prison without any possibility of parole rather than 3 to 4 years followed by parole. The difference in sentence is undeniably material to the plea decision.

And it offends traditional notions of fairness to claim that a plea entered under a misapprehension of the dimension is a voluntary plea in the constitutional sense. Equally offensive is the suggestion that a lawyer meets any reasonable standard when they fail to advise a defendant that a plea will result in parole ineligibility & a lengthy period of incarceration. Such a suggestion renders empty & meaningless the constitutions guarantee of effective legal representation. See: also: Hawkins V. Murray (4th Cir 1993); Bustos V. White; CPS Armstrong V. Egler; Moody V. United States; Czere V. Butler; U.S. V. Young (4th Cir 1992); Fraser V. State; the Boggs Act; Holmes V. United States (11th Cir 1989); Sparks V. Sowders (6th Cir 1988); Fields V. Taylor (4th Cir 1992)

- In sum it seems clear petitioner has succeeded in showing that he recieved constitutionally ineffective assistance when his counsel failed to advise him that parole ineligibility would be a direct consequence of his plea. This conclusion while a necessary predicate for relief does not end the analysis. To prevail petitioner must show more, he bears the burden of establishing prejudice from counsel's performance & error. Petitioner has stated & showed that there is reasonable probability that but for counsel's errors he would not have plead guilty & would have insisted on finishing the trial & testifying.

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