

The Hon. Supreme Ct. Clerk
Mr. Daniel E. Shearouse
PO BOX 11330
Colo SC 29211

Date - 5-28-13

Re[#] 2012-211647
pro-se brief

Dear Mr. Shearouse

Please find enclosed for filing my
pro-se brief and designation of matter.

Would you be so kind as to send me
back a filed copy

Thank you

cc: S.D.

Sincerely
Sherman Dewalt

RECEIVED

MAY 31 2013

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Fairfield County
Roger M. Young, Cir. Ct. Judge

Sherman Dewalt

Petitioner

VS

State of South Carolina

Respondent

PETITIONER'S PRO-SE BRIEF

Sherman Dewalt[#] 326410
Unit 3-187-A
McCormick Corr. Inst.
386 Redemption Way
McCormick, SC 29899

Appellate Defender,
for petitioner

David Alexander

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Council v State 670 SE2d 356 _____ App. Defender's
Hillman v Pinion 554 SE2d 427 _____ 8 Brief pg. 5

Strickland v Washington 466 U.S. 668 _____ App. Defender's
Brief pg. 4

Wiggins v Smith 539 U.S. 510 _____ App. Defender's
Brief pg. 4

STATEMENT OF ISSUES ON APPEAL

(1) Whether the Judge erred in ruling that Petitioner's 60(b) and 15(b) motions regarding his claims of Fraud (Extrinsic Fraud) and Mistake regarding counsel's ineffectiveness - by advising Petitioner to plea guilty without conducting an adequate investigation. Where Petitioner plea should not have been deemed voluntarily or intelligently made by the P.C.R Judge, where the Judge erred in ruling that Petitioner's 60(b)/15(b) motions was barred by the statute of limitations.

(2) Whether plea counsel was ineffective in derogation of Petitioner's Sixth Amendment rights by advising petitioner to plead guilty without conducting an adequate investigation

STATEMENT OF CASE

For the benefit of this brief Petitioner concur with Appellate Defender's statement. But Petitioner would add after Petitioner did not appeal:

On March 8, 2011 Petitioner filed a 60(b) and 15(b) motions App.p 103-149. On May 17, 2011 assistant Atty Gen, Suzanne H. White made return to Petitioner's 60(b)/15(b) motion App.p 154-157. Petitioner made return to the assistant Atty Gen's return.

On May 28, 2011 the Judge signed the order of dismissal App.p 158. On June 7, 2011 Petitioner filed a 59(a)/59(e) motion App.p 159-162. On June 10, 2011 the Respondent made its return / motion to dismiss. On July 9, 2011, the order of dismissal dismissing the Petitioner's 59(a)/59(e) motion was signed on July 11, 2011 App.p 163-164. On July 18, 2011 Petitioner filed his return to Respondent's return App.p 165.

ARGUMENT ONE

The Judge erred in ruling that Petitioner's 60(b) and 15(b) motions regarding his claims of Fraud (Extrinsic Fraud) and mistake regarding counsel's ineffectiveness - by advising Petitioner to plea guilty without conducting an adequate investigation. Where Petitioner plea should not have been deemed voluntarily or intelligently made by the P.C.R Judge. Where the Judge erred in ruling that Petitioner's 60(b)/15(b) motions was barred by the statute of limitations.

Petitioner argues that the Judge erred/abused his discretion when he never ever reviewed Petitioner's EXHIBITS that he had attached to his 60(b)/15(b) motions SEE: App. p 103 - 146 (Ex. 5 A-B missing). (Which The Clerk of Court did not send the Atty Gen's office his Ex. 5 until April 14, 2011 after the Atty Gen Office

Made their return SEE: Designation of matter:
Cover-head letter to the Clerk of Ct. dated March
14 2011. and cover-head letter to the Clerk of
Ct. dated April 14, 2011

Petitioner argues that the Atty Gen's return stated that he Petitioner had offered no evidence see App.p. 155. And, the Judge's order stated that Petitioner had failed to include the requisite affidavits see App.p 158

Moreover, Petitioner argues that the Judge erred/abused his discretion when he signed the order of dismissal without first reviewing "his" return to the Atty Gen's return to "his" 60(b)/15(b) motion SEE: Designation of matter: Memorandum
from Clerk of Ct. dated 11/8/11

Petitioner further argue even assuming arguendo that the Judge did review "all" matter.. Clearly, the Judge erred/abused his discretion, when it was controlled by an error of law, when he ruled my 60(b)/15(b) motions was not timely filed. (Where In Chewing v Ford Motor Co 579 SE2d 605 there is no statute

of limitation.

And, where in fact I had submitted evidence SEE: Bowers v Bowers 403 SE2d 127 And, Petitioner further had shown and argued meritorious defenses - in his 60 (b) motion and his return to the Atty Gen's return. As the Petitioner argues the trial court was controlled by an error of law. And, the order was without evidentiary support SEE: Coleman v Dunlap 413 SE2d 15; Hillman v Pinion 554 SE2d 427, which Petitioner re-argue his 60 (b) and 15 (b) motion & rebuttal.

ARGUMENT TWO

Plea counsel was ineffective in derogation of Petitioner's 6th Amend. rights by advising Petitioner to plead guilty without conducting an adequate investigation.

Petitioner incorporate and argues rebuttal his Appellate Defender's argument upon his Johnson petition, into his above argument one, as his own.

CONCLUSION

Based on the foregoing arguments Petitioner's case on the 60(b) / 15(b) issues should be remanded back to the lower court for a full and fair hearing per

Chewing; since there was no statute of limitation to hear Petitioner's claims. Where the Judge clearly abused his discretion... and the order was without evidentiary support.

Further counsel's motion to be relieve as Petitioner's counsel should be denied. And ordered to fully brief his issue - to incorporate Petitioner's arguments upon his pro-se brief. Petitioner also argues that his PCR issues should also be remanded for a new trial.

DATE: 5-28-13

Respectfully submitted
sf Sheerman Dewalt
Petitioner

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Fairfield Co.
Roger M. Young, Cir. Ct. Judge

Sherman Dewalt

Petitioner

vs

the State

Respondent

PROOF OF SERVICE

I, Sherman Dewalt certify that I have served the Supreme Clerk, Daniel E. Shearouse my pro-se brief and designation of matter. By placing the above said into the McCormick Corr Post mail room on this 28 day of MAY to be placed in the U.S. mail with postage prepaid

(94) SWORN to before me s/ Sherman Dewalt
this 28 day of May 2013

J. Frankler
Notary Public

My Commission Expires 12/16/2019

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Fairfield County
Roger M. Young, Cir. Ct. Judge

Sherman Dewalt

Petitioner

vs.

The State

Respondent

PETITIONER'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Petitioner proposes the following to be included in the record on appeal

- (1) Ex. A - coverhead letter to the Clerk of Ct. dated March 14, 2011
- (2) Ex. B - coverhead letter to the Clerk of Ct. dated April 14, 2011
- (3) Memorandum from Clerk of Ct. dated Nov 8, 2011
- (4) App. Defender's Johnson brief
- (5) Appendix 1 - 166

I certify that this designation contains no matter that is irrelevant to this appeal.

Respectfully submitted

DATE: 5-28-13

Sherman Dewalt

Petitioner

Mrs. Betty Beckham, CLERK
CLERK of Court

P.O. Drawer. 299
Winnsboro. S.C 29180

2011 APR 18 A 9 BASE# 2008-CP-20-322

FAIRFIELD COUNTY
CLERK OF COURT
BETTY J. BECKHAM

Re: Ex. C

DATE-4-14-11

Dear. Hon. Clerk Beckham.

Will you Please send A copy of this Ex. C Here to the Attorney General's office it go's along with my NEW P.C.R that was filed with you on 4-8-11 and would you be so kind as to send me back A Copy thank you!

Sincerely
Mr. Sherman Dewalt

Mrs. Beckham

2008-CP-20-322 60(b)/15(b)

I know you forward A copy of my Ex.A-Ex.P.2 to the A.G office to go along with both my motions but did you forward one to the Judge also?

Thanks. MR. DEWALT

Mailed
Copies to
DY + A.G.

Sherman Dewalt, 326410
F-4-Rm-225-B
M.C. I
386-Redemption-WAY
McCormick, S.C. 29899

Memorandum

OFFICE OF CLERK OF COURT
FAIRFIELD COUNTY
P.O. DRAWER 299
WINNSBORO, SC 29180
Telephone: 803-712-6526
Fax: 803-712-1506

TO: Ann Mueller

FROM: Betty Jo Beckham, Clerk of Court

Subject: Sherman Dewalt

BJ

DATE: 11-8-11

ENCLOSED ARE COPIES THAT I RECEIVED IN THE MAIL TODAY. I HAVE RESPONDED TO THIS DEFENDANT SO MANY TIMES WITH HIS SAME REQUEST. I HAVE NOTHING IN THE FILE THAT SHOWS HIS RETURN TO THE STATE'S RETURN. I HAVE SENT HIM COPIES OF ALL HIS LETTERS AND IT APPEARS HE KEEPS ASKING FOR THE SAME THINGS. PLEASE TELL ME WHAT ELSE TO DO. I DID NOT SENT THE LETTER TO JUDGE YOUNG BECAUSE IN THE LETTER TO JUDGE YOUNG FROM YOU STATES THAT YOU ARE SENDING COPIES OF THE MOTION TO THE JUDGE ALONG WITH AN ORDER. I AM AT MY WITS END AND DO NOT KNOW WHAT ELSE TO DO. PLEASE ADVISE.

THANKS FOR ALL YOU DO TO HELP ME. SORRY TO HAVE TO BOTHER YOU IF YOU HAVE A COPY OF THE DEFENDANT'S RETURN TO THE STATES RETURN PLEASE SEND TO ME.

The Hon. Clerk, Beckham
P.O. Drawer # 299
Winnsboro, SC 29180

RECEIVED

MAY 31 2013

Date 3-14-11

2011 MAR 15 A 10:48 SUPREME COURT

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

Re: Ex A - P2
60 (b) & 15 (b) motion

Dear Ms. Beckham

Please be advised, that I am respectfully requesting to know was my Ex^s filed alone with the above said motions 3/8/11. Please note: I can not serve the State / the Respondant w/out said Ex^s. Thus, would you be so kind as to forward me said filed Ex^s. Although, if your office is going to serve the Ex^s upon the State, please advise.

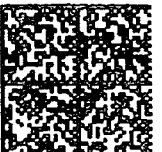
Thank you

Sincerely

cc: Personal file

Mr. Sherman Dewalt

MR. SHERMAN DEUSAIT, 326410
F-3-Rm-187-A
M.C.I
386-Redemption-Wing
McCormick, S.C. 29899



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The Supreme Court of South Carolina
MR. DANIEL E. SHEPPOUSE, CLERK of Court
P.O. Box 11330
Columbia, South Carolina 29211

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