STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO RICHLAND COUNTY

Honorable L. Casey Manning, Circuit Court Judge

APPELLATE CASE NO. 2021-001270

Gary Anthony White,Jr. ..... Petitioner,

vs.

State of South Carolina, ... Respondent.

PRO SE JOHNSON PETITION FOR WRIT OF CERTIORARI

Gary Anthony White,Jr.
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE PETITIONER

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ISSUES PRESENTED

(1). Did the PCR Judge's denial of an evidentiary hearing, where there existed a matter of law, and the question should or could have been raised, sua sponte, concerning a possible judicial relating to the issues within the case, constituting a recusal of this Judge and a hearing set as this matter?

(2). Did the PCR judge err in refusing to grant an evidentiary hearing upon the matters in the Motion For Default Judgment; To Strike The Respondents Motion To Dismiss; and To Proecdurally Bar Pleading, due to the fact that Respondents fail to comply with Rule 12(a); and Rule 55, SCRCP, for a period of more than approximately (500) days?

STATEMENT OF THE CASE

On July 21,2004, A Richland County Grand Jury indicted Petitioner for two counts of Armed Robbery and one count of Kidnapping. The State served notice of intent to seek life without parole due Petitioner's prior convictions. The Honorable James R. Barber, Circuit Court Judge, presided over the jury trial. Stacy Owens, Esquire, and LaNelle Dyrant, Esquire, represented Petitioner. The State was represented by, Dolly Garfield, Esquire, and Vanessa Cooper, Esquire, prosecuted the case.

The prosecution alleged that on April 19,2004, Petitioner participated in the armed robbery of the Circle K convenience store, located on the corner of Garner's Fery Road and Old Woodlands Road in Columbia. The Store manager, Gwen Anthony (Victim) testified that two robbers came into the store with their faces covered. One man had a gun and held it to her neck. The Victim claimed the gunman had on a mask, white shirt, dark jeans, and a black and silver .45 caliber handgun.

Victim alleged the men took cash from the register, lottery tickets and beer , as well as her wallet and cell phone. Victim claimed that at one point the robber with the gun appeared to pass out; his head fell on her shoulder. Victim alleged that after the robber with the gun woke uo, he attempted to push her out the store and make her leave with him, but her resistance made it possible for her to get away.

The two robbers ran off towards Old Woodlands Road. Victim flagged down Officer Rouppasong, ("Officer"), down and he gave chase after one of the alleged robbers. This Officer saw the

robber get into a Honda, and then get out. The driver of the Honda, Roy Wiggins, was in the car. Petitioner's driver license was in the car, on the passenger seat. The stolen items from the Victim and store were found near Honda. The Officer stayed with Wiggins and called for back up.

Other officers arrived and they set up a perimeter. A K-9 Officer arrived and the dog tracked the neighborhood behind Circle K and Petitioner was discover, asleep, under some bushes, with a .45 caliber handgun, dressed in a white shirt and dark jeans. Three men were charged with two counts of Armed Robbery and one count of Kidnapping ... Petitioner, Morris, and Wiggins.

No fingerprints were found on any of the items recovered. Despite being caught in the Honda near the stolen items. Roy Wiggins gave self-serving testimony during Petitioner's trialand testified that he was merely present in the car with Petitioner and Anthony Morris, when they stopped near Circle K. Wiggins claimed Petitioner got out of the car with a handgun and headed for the Store. Wiggins testified that he refused to participate in the robbery. Wiggins did admit he was testifying in hopes of getting a favorable disposition of the charges.

Morris testified that he robbed the Store with Petitioner. Morris alleged Petitioner held the handgun while he stole the items. Morris admitted he had already pled guilty and was awaiting sentencing. Morris testified that there was no plea deal but admitted that he hoped his testimony against Petitioner would assist him in obtaining a favorable sentence.

Petitioner was convicted and sentenced to concurrent terms of life without the possibility of parole for each charge. Petitioner then filed a timely notice of appeal. On direct appeal

On August 14,2020, Petitioner filed a motion in opposition to the conditional order of dismissal. In this opposition pleading, Petitioner explained he first learned of the Conflict claim, on November 19,2019. It was Petitioner's position that had been "factual basis" established to demonstrate and show that Hans Pauling, Esquire, represented Morris. Petitioner attached, as an Exhibit, a document entitled "Conflict Memorandum" which was dated June 25,2004. The conflict memo addressed the existence of a conflict relating to the Public Defendanrs Office and Morris and Petitioner, as co-defendants. On September 17,2020, Petitioner filed a second amendment to this pcr application.

On July 20,2021, the pcr court issued a final order of dismissal, which included the indictments and sentencing sheets for Petitioner's co-defendant Anthony Morris. In the final order the court found no conflict of interest because Hans Pauling represented Morris on the charges, as "evidenced by the sentencing sheets", and because Petitioner was represented at trial by Stacy Ownings and LaNelle Durant, not by Jason Chehoski. The record shows no party listed in the memorandum ultimately represented Applicant or his co-defendant." The court further found that the conflict claim was not newly discovered evidence because the evidence was not material to guilt or innocence, and Petitioner failed to show he was entitled to an evidentiary hearing.

Petitioner filed a motion to alter or amend judgment. The Respondents filed a Return. Petitioner made a response to the Return. On September 29,2021, the court issued an order denying Petitioner's motion pursuant to Rule Rule 59(e).

This pro se Johnson Petition for WRIT OF Certiorari is as follows:

(1). Did the PCR Judge's denial of an evientiary hearing, where there existed a matter of law, and the question should or could have been raised, sua sponte, and the question possibly a judicial recusal relating to issues within this case, constituting a recusal of this judge and an hearing set as to this matter?

The failure of this PCR judge in this matter, to take notice and disclose the fact that the Honorable L. Casey Manning, Circuit COurt Judge, had previously presided over Petitioner's initial pcr proceeding. This matter is before this Supreme Court, due to the fact that, in a formal correspondence filed September 27,2021, (see Appendix, p. 1023-1024), Petitioner sought the appointment of counsel to assist him in presentation of the issues that were sought to be preserved. For the court to fail to address the request for appointment of counsel, denies and impede's Petitioner's due process protections pursuant to Rule 71.1(d), of the South Carolina Rules of Civil Procedure, SCRCP.

The failure of the court to address this pro se issue that Petitioner would proceed, or not, as mandated by Whitehead v. State, 310 S.C. 532, 426 S.E.2d 315 (1992). In Whitehead, this Court held that, "In our view, the plain and unambiguous language of 71.1(d) mandated the appointment of counsel for indigent applicants; therefore, we have held that when a pcr is not dismissed before a hearing, the PCR judge must appoint

cousel or obtain a knowing and intelligent, valid waiver to make Applicant aware of the waiver of counsel and the dangers of self representation." See also Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975)(citing the two elements of exploring voluntary self-representation); Wroten v. State, 301 S.C. 297, 391 S.E.2d 575 (1990).

Petitioner believes that this claim operates as a mechanism, in which to demonstrate an abuse of discretion on the part of the PCR court to ensure Petitioners due process associated with these types of matters.

In accordance with Whitehead it was mandated that for Petitoner to proceed, there had to be a hearing, that would ofr a colloquy between the PCR judge and Petitioner, which would ensure that a voluntary and intelligent waiver had been obtained. Petitioner was never afforded the opportunity for such a hearing and this complicates the procedural aspects of these proceedings. See Clear Channel Outdoor v. City of Myrtle Beach, 372 .C. 230, 642 S.E.2d 565 (2007)(due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses); Kurschner v. City of Camden Planning Com'n, 376 S.C. 165, 656 S.E.2d 346 (2008)(same). There exists the right to, the most minimal due process rights associated with procedural rules. Hiott v. State, 381 S.C. 622, 674 S.E.2d 491 (2009)(Rules of Civil Procedure are applicable to pcr proceedings).

Rules of procedure, like statutes, should be given their plain meaning. When the text of the rules are clear and unambiguous, judicial judicial text in the Rules of Civil Procedure, judicial inquiry is complete. (relying on Business Guides v. Chromatic Communications Enterprise, Inc., 498 U.S. 533, 111 S.Ct. 922, 112 L.Ed. 2d 1140 (1991)(clear and

unambiguous text in the Federal Rules of Civil Procedure is given its plain meaning).

Rule 71.1(d) expresses there exists a mandate to the appointment of counsel, in a pcr proceeding, to address issues of material facts which require an evidentiary hearing for a final determination as to their merit. Petitioner also states for this record that, the Respondents are not infallible when making decisions concerning situations like the appointment of counsel, and there has been a grave mistake relating to that very issue in this instant case. This has caused a deprivation to Petitioner's right to be appointed counsel for assistant in preparation for a pcr evidentiary hearing.

This PCR judgewas in a positiion to appoint counsel for ensuring that Petitioner was afforded his rights to this appointment. The PCR court had the authority, sua sponte, to order such appointment; and to order that he be recused because of the fact that this current pcr application would place him into a position to re-evaulate his origianl decision in the first pcr proceeding. By dismissing this instant case in the manner that he did, gives cause to the courts impartiality to come into question. Mortage Electronic System, Inc. v White,384 S.C. 606, 682 S.E.2d 498 (Ct.App. 2005)("A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned").

There exists a two prong question involving this specific issue that may come into consideration pertaining to this recusal claim: (1) the record demonstrates that the original Chief Administrative Judge, for the Fifth Judicial Circuit, Alsion Renee Lee, served the [proposed] Conditional Order of Dismissal relating to this instant matter. [#2018-CP-40-514]. And had this PCR judge recognized and disclosed the question as is

relevant to this specific claim, there would not be any question unanswered. Petitioner would take a position that the disclosure of this question, relating to some form of conflict then it would surely be a less assuaging of any concerns against him. Davis v, Parkview, 409 S.C. 266, 762 S.E.2D 535 (Ct.App. 2014)(judges decision to disclose any relationships he might have ... during the coure of litigation ... would demonstrate his sensitivity to assuaging any concerns against him).

In Floyd v. State, 303 S.C. 298, 400 S.E.2d 145 (1991), overruling Henry v. State, 275 S.C. 148, 268 S.E.2d 41 (1980). Floyd altered the manner that a judge should take whenthe judge presided over two separate questions, like, a pcr proceeding and/or trial, on the same manner. The very idea of a judge seeking a recusal did not, per se, show there existed prejudice in every situation, that such an issue would arise and athat no judge could remain impartial, the rule announced in Floyd eleminated the suggestion of impartiality. Relying on Canon 3(c)(1), of the Code of Judicial Conduct, (Rule 501, of the South Carolina Appellate Court Rules, SCACR). And had the propensity of placing the judiciary's integrity into question, especially where there exists a standard wich would question this judges reasoning for summarydismissal in this matter. Where there had recently been disclosed a "Conflict of Interest Memorandum", issued by the original trial attorneys, where a portion of any records (but this case), was never disclosed relating to all of these co-defendants, to include Petitioner.

Petitioner would have discovered this Memorandum, through the Public Defenders Ofice, at trial, if, trial counsel (who was an "arm" of the Public Defenders Office), had disclosed the Memorandum from the very onset of the trial proccedings. the

mere existence of a conflict of interest, even as alleged, requires an evidentiary hearing, and appointment of counsel to over see the information and records relied upon to present and litigate such an extremely prejudicial claim. Furthermore, since this had to be presented as a "successive" application due to the amount of time that had transpired from trial; and, simply due to the fact that this is a successive application, raising ineffective assistance of trial and pcr counsel; the application should not have been summarily dismissed. Carter v. State, 293 S.C. 528, 362 S.E.2d 20 (1987)9successive application, alleging ineffective assistance of counsel, should not be barred).

This Court, in Love v. State, 428 S.C. 331, 834 S.E.2d 196 (2019), it was held that, "[t]here are situations where the interest of justice requires PCR courts to be flexible with procedural requirements **before** PCR Applicants suffer procedural default on substantial claims. Such flexibility is consistent with the purpose and spirit or our Rules of Civil Procedure. Petitioner has been foreclosed from the rights and advantages of statutory law where, he has been dismissed without an evidentairy hearing and been denied the appointment of counsel; in otherwords, he has been extremely prejudiced without the Constitutional and statutory position. See S.C. Code Ann. §17-27-90 ("to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was adequately raised in the original, supplemental or amended application"). The record that now clearly demonstrates the PCR judge was or had a scheme of mind to "do away" with this case for whatever reason. Especially where this Petitioner has recently (§17-27-45(a)), had disclosed to him the document entitled "Conflict of Memorandum" Memorandum.

This recent discovery of this Memorandum falls squarely withhin the newly discovered standard. McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013). The record demonstrates that this Memorandum was disclosed and/or discovered several years after the original trial. This was a judicial determination. S.C. Code Ann. §17-27-80 (1985)(Make specific findings of fact, and state expressly its conclusion of law).

Petitioner is of the belief, and position, that this case should be remanded due to the fact that been argues and preserved for this Court's review. There exists prejudice because of the fact that this Judge was placed in a position in which he was "forced" to re-evaluate his previous decisions and determinations in the initial or original pcr proceedings. This matter should be remanded, and another circuit court judge assigned to determine and rule upon these issues.

(2). Did the PCR judge err in refusing to grant an evidentiary hearing upon the matters addressed in the Motion For Default Judgment; To Strike The Respondents Motion To Dismiss; and To Procedurally bar Pleading; due to the fact that Respondents failed to comply with Rule 12(a); and Rule 55, SCRCP, for a period of more than approximately (500) days?

Rule 12(a), of the South Carolina Rules of Civil Procedure, SCRCP, provides in pertinent part: "provided further that the State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within ... 90 days ... if it arises out of a jury trial".

The analogy of this issue begins with the fact that Petitioner filed this current application on January 24,2018. The Respondents filed a Motion To Dismiss, June 22,2020. The only reason that the Respondents filed their motion to dismiss, June 22,2020, was due to the fact that Petitioner filed an amendment to the applicatiion when discovering a conflict of interest, which was discovered when the circuit Public Defenders Office at last, and after several years of formal requests, fully disclosed their complete case/manual file amassed during the trial proceedings.

When Respondents moved to dismiss, after such an extremely lengthy period of time, of approximately (14) months,

(minus the 90 days of Rue 12(a)), the pleading should have been dismissed as untimely and beyond the procedural time limits afforded parties in this civil action.

RUle 55, SCRCP, sets the parameters in the initiation of a default proceeding. (Rule 55(a) - "(a) **ENTRY.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book)".) A careful examination of the courts records would demonstrate that when Petitioner filed the default motion, (July 31,2020), that attached thereto was an affidavit pertaining to the default proceedings. It is believed that the contents, or testimony, within the affidavit was sufficient enough to grant the relief sought therein. Petitioner did not seek monetary damages as a remedy for default, but, sought to have the Motion To Dismiss procedurally barred and thereby grant the proper relief. Petitioner would make one point as relates to the default portion of this position, Respondents cannot claim that there exists some form of "excusable neglect" in thier official capacity relating to the 14 months of deliberate failure to comply with the Rules of Civil Procedure, SCRCP. See Condon v. State, 354 S.C. 634, 583 S.E.2d 430 (2003).

In Condon, This State's Supreme Court examined the South Carolina Attorney Generals ability to intervene in a case which involved the interests of South Carolina citizens, at a later stage of the proceedings. This Supreme Court held that the Attorney General has been reconized as having broad statutory and common law authority in his capacity as the chief legal officer of the State to institute actions involving the welfare of the

State and its citizens, including vindication of wrongs committed collectively against the citizens of the State. See Condon v. Hodges, 349 S.C. 232, 562 S.E.2d 623 (2002). But, it has never been held by this Court, that the Attorney Generals authority to do so is unlimited or somehow uniquely exempts him from acting in accordance with the Rules of Civil Procedure. State v. Beach, 271 S.C. 425, 248 S.E.2d 115 (1978)(while the Attorney Geneal has broad statutory authority, and arguable common-law authority, to institute actions involving the welfare of the State, that authority is not umlimited). **also** Const. art. 6, §7; art. 12, §1; S.C. Code Ann. ®1-7-40 (1976).

As a general rule, the Respondents rely on this Court's holding in Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973), in which to avert any applicability to a default ruling. It is with the following mindset that this Petitioner argues against the Guiyard, purported precedence and would demand of this Court that it overrule Guinyard, as relates to this default matter, and establish a broad line of rrcocedural protection for all citizens that appear within the civil and pcr arena.

When Guinyard was established, the Rules of Civil Procedure, as recognized today, did not exist. The current Rules of Civil Procedure were not promulgated or created until July 1985, and noware the specific procedural mandates utilized by the courts. Guinyardis outdated due to the fact that it occurred prior to the re-structure of the Code of Alws that became our presentday statutory system in 1976. One pint that would be singled out by Petitioner is, that even though the court may interrupt the procedural rule of time limits in Rule 12(a) (ninety days), as a discretionary applicability by the courts; Petitioner seriously doubts that this Court would draft a blank order to which would give the Attorney General an uniquely unlimited amount of time, (such as the 14 to 16 months granted in this current matter), to comply with the mandates required by the Rules of Civil Procedure. Petitioner argues that such a time

period, as the one complained herein, is overly broad and has an arbitrary and capricious endangerment to procedural due process protections.

Petitioner raises this portion of this claim, pursuant to Rule 271, of the South Carolina Appellate Court Rules, SCACR. Rule 271, provides in pertinent part: "Permission of the appellate court shall not be required to argue against precedence in the brief".). As required by these Rules, and where the motion for default relief was filed with the lower court, and raised in the motion for reconsideration, this matter was brought forth, and exhausted in the lower court proceedings, provides sufficient jurisdictiion and preservation for this Court to have the authority in which to entertain this matter.

In examining the meaning of the applicable procedural rules, i.e., Rule 8(c), SCRCP, (affirmative defenses)(reply); Rule 12(a), SCRCP, (time for answer); Rule 40(2)(b), SCRCP, (failure to prosecute); and Rule 55(b)(2), SCRCP, (default); that there contians mandatory predicates in the provisions which create a plain, clear and unambiguous language and intent demonstrating that the rules applicability is mandatory and these rules should be employed for enforcement of procedural due process. Abbeville County School Dist. v. State, 335 S.C. 38, 515 S.E.2d 535 (1999)(relying on the South Carolina Constitution art. 1, §23)("The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory and not merely directory, except where expressly made directory or promissory by its own terms"; and the word "shall" is mandatory); Ravenel v. Deckle, 265 S.C. 364, 218 S.E.2d 521 (1975)(the courts are bound to presume that framers of the Constitution had some purpose in inserting every clause and every word contained in the document and it is never to be supposed that a single word was inserted in the organic law of the Sate without the intention of conveying thereby some meaning); Davenport v. City of Rock Hill, 315 S.C. 114, 432 S.E.2d 451 (1993)(same).

Petitioner understands that these Respondents in this matter are the Attorney General of this State. and that this Office is held by the Chief Legal Officer of this State. Yet, even though this Attorney General holds such a position certainly does not exempt him from the applicability of the Rules of Civil Procedure. Condon, 354 S.C. at 434, 583 S.E.2d at 642 (the Attorney General, like everyone else, must abide by the rule of court). That means all rule, not just the ones he may wish to follow.

In Condon, this Court held that the Attorney General has been recognized as having broad statutory and common-law authority in his capacity as the Chief Legal Officer of this State to institute actions involving the welfare of the State and it's citizens, including vindication of wrongs as being held in default, because of their indifferent approach to the Rules of Civil Procedure. And the very evidence provided for this case is a perfect example demonstrating the flagrant disregard for these procedural rules.

Rule 81(b), SCRCP,the Respondents have a duty and obligation in which to present a defense or denial to the allegations within the application.

Rule 12(a), SCRCP, these Respondents had 90 days in which to answer or respond to the application due to the fact it was the product of a jury ... "a defendant shall serve his answer ... and every defense in law or fact, to a cause of action in any pleading."

Rule 40(e)(2), SCRCP, states that there should have been a Scheduling Order, especially where Petitioner sought a Scheduling Conference. Demanding an evidentiary hearing, in open forum, and in an effort to raise his merits before the PCR court. In Re Plot Module Post-Conviction Relief Docket Management, 413

S.C. 470, 776 S.E.2d 373 (2015).

The very Rules of Civil Procedure that are relied upon by this Petitioner to challenge the validity of these Respondent'sMotion To Dismiss, to be held in default, and have stricken from the record, and/or procedurally defaulted, are clearly demonstrated within this present claim to be far from excess of procedural lines.

The Respondents cannot rely upon a stance that Petitioner has filed a successive application, or assert an affirmative defense at such a late stage of the pcr proceedings. It is this Petitioner's stance that these Respondents have taken such a [lackadaical] approach in this instant case. that it is paramount to an actual "abandonment". It is evident that their refusal to abide by the procedural rules amounts to affording Petitioner the very relief that he was demanding. Simply because the Respondents waited until such a lengthy amount of time, when Petitioner amended his pcr application, does not, in itself, excuse the amount of time that had passed prior to the motion to dismiss.

If we take the time to examine the intent of the legislature, and this Court in promulgating these procedural rules, it can be readily discerned that there exists mandatory predicates or language which provides for mandatory performances within the various procedural safeguards. Mandatory language within a provision or statute, court rule, regulation offers the strongest guidance for comprehending any performance within that rule.

These Rules are structured in a fashion that creates the aura they are to be enforced, once brought to the attention of the court, so that no party may deprived of due process and justice. At no time did these Respondents challenge or offer any

form of "excusable neglect" to off set of overcome the motion as to the question of default, strike,or procedurally bar the pleading. These Respondents have displayed their arrogance in deliberately ignoring the origianl filing date and have taken a stance that no party may be held in default in a pct proceeding. Edith v. State, 369 S.C. 408, 637 S.E.2d 844 (2006).

In Edith, the results as to the question of the applicability to default rang a different bell. This Court has previously held that issuance of default judgment based on the failure of a [party] to file a responsive pleading or to appear is not appealable. Duncan v. Duncan, 93 S.C. 487, 76 S.E.2d 1099 (1913)(default judgment based on a failure to file a response). This Court saw no reason why this same rule should not be equally applicable to a PCR application who fails to avail himself of the opportunity to reply to a conditional order of dismissal and as a result of this default. Taking into consideraion the fact that this instant case involves a direct failure to respond and assert any answer to the issues within the application within 90 days (or even 180 days), it should ave been logical for the pcr court to issue a default, or the Clerk to enter default, and place the Respondents into a position to reply or object to the ruling. As it stands, the Respondents have gained an unfair advantage in the procedural protocols area, where Petitioner filed to abide within the procedural rules, he would have been immediately defaulted.

One more point should be reflected in this issue ... had the pcr court ruled in default against these Respondents, it did not have to necessarily order the Respondents to some form of discreationary sanction. CF. DSS Child Support Enforcement/Cindy Ruff v. Mangle, 370 S.C. 226, 848 S.E.2d 788 (2020). The courts are, generally, granted a broad discretion when fashioning a relef.

When examining the nexus of Guinyard versus this present case, there exists no similarities... especially in lieu of thefact that Guinyard raised nothing in the record of the lower court to support his position. Petitioner is of the stance that Guinyard places a deprivation within the procedural realm that permits these Respondents that permits them and unfair and unconstitutional advantage to this adversary within the pcr arena. If Petitioner were to permit 14 to 16 months to pass before issuing an objection to a conditional order of dismissal, he would be sanctioned by dismissal for failing to prosecute or default. It all goes back to the old adage ... "what's good for the goose is good for the gander". Petitioner is of the belief that he has presented sufficient argument and grounds to have this Honorable Court to grant the relief herein ... that Guinyard no longer sets the stage in these types of proceedings, by over ruling it's precedence and establishing a new precedence consistent with today's procedural rules and standards.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays for relief as demanded within one or both of these issues: (1) order an evidentiary hearing to be hled as relates to this case and any issues requiring amendment; and (2) overruling Guinyard in support of today's procedural rules.

January 19,,2023

Respectfully Submitted,

Gary Anthony White, Jr.
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE PETITIONER

Gary Anthony White,Jr.
Q4B101 #309726
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

Pro Se Petitioner

SOUTH CAROLINA SUPREME COURT
CLERK OF COURTS OFFICE
Patricia A. Howard, Clerk
Post Office Box 11330
Columbia, South Carolina
29211-1330

RE: FILING OF ENCLOSED PLEADING
White v. State, #2021-001770

Clerk,

Please find enclosed for filing:

1). Notice Of Motion And Motion To Enlarge Time, Pursuant To Rule 263(b), SCACR;and

2). Certificate of Service.

If I may be of any further assistance to this Court, in these matters,, please do not hesitate to contact me. Thank you for this Courts' time and attention to these matters.

September 13 ,2022

Respectfully Submitted,

Gary Anthony White,Jr. #309726

cc: FILE
CLERK

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal From Court Of Common Pleas

Honorable L. Casey, Manning, Circuit Court Judge

Case No. #2021-001770

Gary Anthony White,Jr. ..... Petitioner,

vs.

State of South Carolina ..... Respondents.

NOTICE OF MOTION AND MOTION TO ENLARGE TIME, PURSUANT TO RULE 263(b), SCACR

This matter comes before this Honorable Court where this pro se Petitioner, Gary Anthony White,Jr. #309726, would respectfully seek an enlargement of time of thirty (30) days beyond the already calculated time. This enlargement is sought pursuant to Rule 263(b), SCACR. (Rule 263(b), provides in petinent part: "The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended ... by the appellate court, or by any Judge or Justice thereof").

It is this Petitioner's belief, and position, that this Motion is a proper vehicle, and mechanism, in which to seek the relief sought herein. This Motion is not sought as a means to cause undue delay, nor waste the time and resources of any party associated herewith, to include this Court. It is an effective way to request the relief sought herein, i.e., enlargement of time, in order for Petitioner to prepare, copy, research, and serve the Johnson Brief. Without this additional time, Petitioner could suffer dismissal of his case, that would cause him the denial of justice by dismissing his case.

Petitioner served a notice of appeal, where he had pursued a second Post-Conviction Relief (PCR) application. This PCR raised issues of newly disclosed information; PCR counsel failed to pursue Petitioner's "one bite at the apple"; and an actual conflict of interest claim.

On June 29,2022, this Court served an notice of forty-five (45) days to file a pro se Johnson Brief. This notice was served on July 5,2022, via Institutional Legal Mail Services.

On July 18,2022, Petitioner served a formal correspodence upon this Court informing this Court that, there was a failure on the part on Appellate counsel to properly and timely provide Petitioner a copy of the Johnson Brief and Appendix. Also, on July 19, 2022, Petitioner served upon Appellate counsel a formal correspondence inquiring as to the Johnson Brief that the Clerk's Office had notified him had been filed in relations to this case.

On July 22,2022, Appellate counsel served a correspondence upon Petitioner stating that she had mailed the Appendix and a copy of the Johnson Brief. On August 5,2022, Petitioner received a copy of the Appendix and Johnson Brief from Appellate counsel.

Since the service of the Appendix and Johnson Brief, there has been two (2) separate incidents where

Petitioner's living unit [Q4]has been locked down because of inmates either: (1) having an inmate infected with a strain of COVID, and in an effort locked down and/or quarantined to keep from infecting other inmates or staff members; and (2) three living units were placed upon quarantine for several inmates testing positive for COVID and isolating an entire Unit. Petitioner's living unit has recently been taken off quarantine due to inmates testing positive for COVID. As a general rule, a living unit stays locked down for ten (10) to fourteen (14) days.

Quarantine is when the living unit is totally placed on lock down and there is no movement whatsoever coming into and out the unit infected. This includes, jobs, mail room services, Law Library, Education, etc., and any and all inmates are confined to their cells. Petitioner has been placed into a situation where he has been denied legal research materials, photocopying, mail room service and other valuable resources in being able to utilize for purpose of preparing the Pro Se Johnson Brief.

Petitioner believes that he has stated sufficient grounds for this Court to grant the relief sought herein as the granting of an additional thirty (30) days time so that he may have sufficient time for the research, preparation, copy and serve the Pro Se Johnson Brief. It is with this Petitioner's position that he should be granted said relief.

CONCLUSION

WHEREFORE, Petitioner prays this Court grant this Motion To Enlarge Time, extending the time granted by thirty (3) days, for the foregoing reasons.

September 13, 2022

Respectfully Submitted,

Gary Anthony White, Jr.
Q4B101 #138244
Perry Correctional Institution
430 Oklawn Road
Pelzer, South Carolina
29669

PRO SE PETITIONER

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal From Court of Common Pleas

Honorable L. Casey Manning, Circuit Court Judge

Case No. #2021-001770

Gary Anthony White,Jr. ..... Petitioner,

vs.

State of South Carolina ..... Respondents.

CERTIFICATE OF SERVICE

I, Gary Anthony White,Jr. #309726, pro se Petitioner , hereby certifies that a copy of the following has been served: [1] Notice Of Motion And Motion To Enlarge Time, Pursuant To Rule 263(b), SCACR; and [2] Certificate Of Service, upo Respondent's counsel of record, South Carolina Attorney Generals Office, by depositing a copy of the same in the United States mail, First Class Postage affixed thereon, and addressed as follows:

CERTIFICATE OF SERVICE ADDENDUM PAGE
PAGE [2], Gary Anthony White,Jr. #309726
September 13, 2022

SOUTH CAROLINA SUPREME COURT
CLERK OF COURTS OFFICE
Patricia A. Howard, Clerk
Post Office Box 11330
Columbia, South Carolina
29211-1330; and

SOUTH CAROLINA ATTORNEY GENERALS OFFICE
Yasmeen F. Klien, Esquire
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, South Carolina
29211-1549.

September 13, 2022

Respectfully Submitted,

Gary Anthony White, Jr.
Q4B010 #309726
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE PETITIONER

STATE OF SOUTH CAROLINA
In The Supreme Court

Certiorari to Richland County

Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. #2021-0001270

Gary Anthony White,Jr. ..... Petitioner,

vs.

State of South Carolina, ... Respondents.

Certificate of Service

, Gary Anthony White,Jr., #309726, the pro se Petitioner, certifies that I have served the: (1) Pro Se Johnson Petition For Writ Of Certiorari; and (2) Certificate of Service, upon Respondents counsel of record, by depositing a copy of the same, in the United Mail Service, First Class postage affixed thereon, and addressed as follows:

SOUTH CAROLINA ATTORNEY GENERALS OFFICE
D. Russel Barlow, II, Esquire
Post Office Box 11549
Columbia, South Carolina
29211-1549;

SOUTH CAROLINA SUPREME COURT
CLERK OF COURTS OFFICE
Patricia A. Howard, Clerk
Post Office 11330
Columbia, South Carolina
29221-1330; and

OFFICE OF APPELLATE DEFENSE
Joanna K. Delany, Esquire
Post Office Box 11589
Columbia, South Carolina
29221-1589.

January 19,2023

Respectfully Submitted,

Gary Anthony White,Jr.
Q4B220 #309726
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE Petitioner

Gary Anthony White,Jr.
Q4B220 #309726
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

PRO SE PETITIONER

SOUTH CAROLINA SUPREME COURT
CLERK OF COURTS OFFICE
Patricia A. Howard, Clerk
Post Office Box 11330
Columbia, South Carolina
29221-1330

RE: FILING OF ENCLOSED PRO SE PETITION
White v. State, 2021-0001270

Clerk,

Please permit this correspondence to serve as a formal request concerning a Motion To Enlarge Time, filed September 13,2022, seeking additional time for preparation and filing of the attached pro se petition.

Appellate counsel filed a Johnson Petition (or Brief) seeking review of an issue relating to an actual conflict of interest. According to Appellate counsels records, she had serve a copy of the Brief and Appendix upon this Petitioner, on or about July 22,2022. Appellate counsel informed Petitioner that, if he did not receive a copy of the Brief and Appendix, that she would mail another as soon as she could have them prepared.

On August 5,2022, Petitioner received a copy of the Brief and Appendix that had been prepared by Appellate counsel. Petitioner immediately began to work on the pro se part of his

Brief.

Several circumstances began to evolve that would hinder Petitioner's progress, that was unforeseeable and avoidable at that time. First, there was introduced to this inmate population a strain of the new variant COVID virus or FLU. Every time this occurs, the Administration places the units on lock down attempting to control the spread of the virus. This goes as long as 8 weeks, once the inmates begin to demonstrate normal temperatures and symtoms, the lock downs cease. Second, the Law Library and phone systems now (since 2019) operate on WIFI; recently there has been 4 to 6 weeks that the WIFI had gone out. The last time was a cut cable. This caused Petitioner's ability to research and prepare the Brief to be served on all parties, to include this Court. When the WIFI goes down, which is becoming quite often, the computers in the Law Library is non-functioning. Then we have to take into consideration the past Holidays; Thanksgiving, Christmas, and New Year, causes a shut down of all non-essential portions of the facility to be locked down. When one calculates the amount of days that the facility requires to celebrate these holidays, approximately 13 to 15 days, total, plus weekends. It has been impossible for Petitioner to have access to the Law Library services, which includes typing equipment, legal copies, pens, paper, envelopes, that are required for conduction legal affairs.

Furthermore, it was this Petitioner's understanding that, if, this Court were to grant the relief of enlarging the time, a written Order would be served by this Court upon all parties of record. At no time has any written order been served upon this Petitioner alerting him of the change in deadline. Please note for the record, at no time has this PETITIONER intentionally abandoned or failed to file his pro se Brief. It has been a battle to get it finished because of the many set backs, and where this Court has not provided a new time deadline by written Order, and this has caused some confusion relating to this isue.

Rule 267, of the South Carolina Appellate Court Rules, SCACR, provides in pertinent part: "**Extending and Diminishing TIME Prescribed By These Ruels.** The time prescribed by these Rules for performing any act set except the time for serving notice of appeal under Rule 203 and 243 may be extended or shortened by the appellate court or any judge thereof."

If this Court were to presume or hold that Petitioner had abandoned this case, then, Petitioner would move this Court to consider that "good cause" been shown, and permit this Petitioner to file this pro se brief, out of time, to ensure that

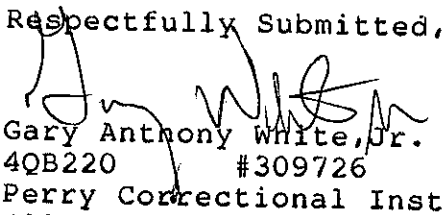
all rights, especially the right to appeal the lower court granting of a summary dismissal, and where justice requires this review. See Rule 6(b), of the South Carolina Rules of Civil Procedure, SCRCP, (Rule 6(b), SCRCP, provides in pertinent part: "Upon motion made after the expiration of the specific period, for good cause shown, permit the act to be done").

Petitioner includes a pro se brief attached hereto, so that if this Court agrees, and grants the filing of this brief, a copy will be available to this Court for review and consideration. Considering the many obstacles that have arose due to Petitioner's incarceration, Petitioner is of the belief, and stance, that relief should be granted as relates to this motiion to enlarge and the demand for an evidentiary hearing.

If this Petitioner may be of any further assistance, in this matter, please do not hesitate to contact him. Thank you for this Court's time and attention in this matter.

January 19,2023

Respectfully Submitted,



rds/GAW

cc: FILE
CLERK
BARLOW
DELANEY

Gary Anthony White,Jr.
4QB220 #309726
Perry Correctional Institution
430 Oaklawn Road
Pelzer, South Carolina
29669

pro se petitioner

Gary White Jr 309726
430 Oaklawn Rd
Pelzer S.C. 29669

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Office of Appellate Defense
Joanna K. Delany, Esquire
Post office Box 11589
Columbia, S.C. 29221-1589

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