STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to Cherokee County
The Honorable Lee S. Alford, Plea Judge
The Honorable Robin B. Stilwell, PCR Judge
Appellate Case No. 2017-001777

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

v

State of South Carolina,
RESPONDENT.

PETITION FOR REHEARING
(Pursuant to Rule 221(a), SCACR)

Petitioner, Alonzo C. Jeter, III, comes respectfully and petitions this Court for a rehearing of the Court's order filed February 15, 2023, affirming the PCR court's decision. Petitioner received notice and written copy of this order on February 22, 2023, by and through the Manning Correctional Institution's legal mail system.

Petitioner hereby respectfully states with particularity the points which have been overlooked and/or misapprehended by this court. Petitioner will also provide citation of authorities which are in support.

I Plea Counsel's Erroneous Advice Regarding Macedonia Baptist Church

This Court's order fails to specifically address and clarify, in the interest of future guidance, public importance, and public interest - whether or not basketball goals which are owned by and on the property of a church are classified as "public playgrounds" and thus are encompassed under § 44-53-445.

This court fails to specifically address and clarify that Church property is not "public" property. See Prince v Massachussetts, 64 Sct 438 (1944); Rhine v First Baptist Dallas Church, No. 3:14-CV-3055-M-BH (N.D. Tex 2016) (Plaintiff, Tracy Rhine, was on Church's property which was private property.)

S.C. Code Ann. § 44-53-445(A) states:

"(A) It is a seperate criminal offense for a person to distribute, sell, purchase, manufacture, or to unlawfully possess with intent to distribute, a controlled substance while in, on, or within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational

center, or a public or private college or university."
Churches are not mentioned in this statute, nor are "private" playgrounds mentioned. This Court failes to concede that Plea Counsel's provided erroneous advice regarding the statute, albeit Plea Counsel did concede that he thinks Churches are encompassed under the statute. (App. P. 84)

Was Plea Counsel's thinking right or wrong? The record, this Court's adjudication, should address this for Petitioner's future appellate purposes. Also, this is an issue of public interest. See Edwards v City of Goldsboro, 178 F3d 231 (1991) (Explaining that an issue "involves a matter of public concern if it affects the social, political, or general well-being of a community."); York v Conway Ford, 325 SC 170, 480 SE2d 726 (1997) (Explaining an issue "has an impact upon the public interest if it has the potential for repetition.")

Secondly, this case and issue, and question as to whether or not churches are encompassed under the statute and are church playgrounds "public" or "private", are questions which would fall under the exception to the mootness doctrine should this be argued. South Carolina Public Interest Foundation v South Carolina Department of Transportation, 421 SC 110, 804 SE2d 854 (2017) ("When asserting that a controversy falls under the exception

to the mootness doctrine for cases capable of repetition but evading review, the party bringing the action need only show the issue raised is capable of repetition and is not required to prove there is a reasonable expectation the issue will arise again; however, the action must be one which will truly evade review.")

It is certainly a danger that this court does not specifically, for the record, state that churches are not encompassed under the statute and that church property is "private" property. The Petitioner's Plea Counsel is still an attorney, The solicitor's office rep, at the PCR hearing did the PCR Judge nor Attorney General know whether churches were encompassed and were "private" property.

Importantly, there is no case law, precedence, in South Carolina that clearly and plainly states that churches are private and that all property belonging to a church is private - to include a basketball goal or playground. Whether or not a school existed within the church is of no affect as the school would also be "private" because it is on church property and belongs to the church. See Plaintiffs' PCR Attorney's line of questioning regarding a school. (App. p. 64) Although there was no school, even if it was it does not change the "private" nature of the church and

or any or all of its property.

II INSUFFICIENCY OF INDICTMENT

This courts order fails to clarify that the terms "public" and "knowing" were not included in the indictment. These words are not simply surplusage or superfluous words as they are crucial elements which must be noticed in order to place a defendant on "proper" and "sufficient" notice.

Petitioner has emphasized how the lack of these words, coupled with the other cumulative circumstances of his lack of access to a law book while held in the Jail with no bond, a mental health breakdown, abuse within the Cherokee County Detention Center, inadequate plea colloquy with regard to the facts surrounding and of the proximity charges - all together affected Petitioner's ability to make a knowingly and intelligently, and thus voluntary plea.

This court, instead erroneously focuses on whether or not Petitioner waived presentment of the indictment. Petitioner explained that it was waived because, and only because, the way it was [written] on the [indictment] it was right." The indictment stated that Petitioner was "within one-half

mile of Macedonia Baptist Church playground." App. p. 227) However, the indictments were insufficient. Plea counsel did not inform Petitioner of the "public" nor "knowing" elements which should have been included in the indictments. State v Tabory, 262 SC 136, 202 SE2d 852 (1974) ("True test of sufficiency of indictment is whether it contains necessary elements of offense intended to be charged and sufficiently apprises defendant of what he must be prepared to meet."); State v Barksdale, 311 SC 210, 428 SE2d 498 (1993) ("State is required to prove every element of crime for which an accused is charged.")

Most important, the court fails to acknowledge that it must be my choice to waive any defects and insufficiencies of the indictment. Petitioner did waive presentment, however he did not do so knowingly and intelligently as he was not noticed of all elements he must meet. Therefore, Petitioner did not waive the defects and insufficiencies of the indictments, but rather the Plea Counsel and Plea Judge did the waiving as they were the persons responsible for assuring knowledge and intelligence of the waiver by providing Petitioner these significant elements through and on the record.

In its order, in footnote #1, the court cites State v Gentry, 363 SC 93, 103, 610 SE2d 494, 500 (2005) as the Supreme Court

states, "In determining whether an indictment meets the sufficiency standard, the court must look at the indictment with a practical eye in view of all the surrounding circumstances." Although the court cites this, it does not perform and take this look as guided by the Supreme Court. Petitioner has provided the practical eye which consists of a person in jail with no law book, experiencing a mental health crisis, abuse. Petitioner has also provided this court the surrounding circumstances - counsel who think that churches are encompassed in the statute, churches can have "public" playgrounds, therefore does not investigate the facts nor facts, attempts to effectively plea bargain while using defective charges, failing to understand that when charges are temporally/closely connected they will result in one strike rather than an LWOP, failure to acknowledge merged prior offense and allows the state to rather use a marijuana conviction as an enhancer. In other words, this court fails to look at the indictment reasonably, sensibly and logically as even with all of this Plea Counsel fails to discuss <u>any</u> facts with regard to the charge, plea, indictment.

If the significant words "public" and "knowing" were included and/or discussed at plea to cure the deficiency, Petitioner would not have waived presentment and would not have pled guilty, because he was not guilty of the crimes.

These words being added to the indictment would have "changed the nature of the offense." See Cutner v State, 354SC151, 580SE2d 120 (2003) (overruled on other grounds).

III Plea Counsel's "strategy" of Avoiding an LWOP Sentence

This court seems to misconstrued the fact that the charges were the result of one single global agreement and arrangement between Petitioner and the confidential informant. Petitioner, has provided this court along with a Rule 60(b) motion - newly discovered evidence which proves that there was one single agreement which brought about the sale transaction. Petitioner has informed this Court of the merged 1 offense prior. Petitioner has shown that churches are not encompassed under the statute. Petitioner has emphasized, as well as did Plea Counsel, that Petitioner pled guilty because he was erroneously told that he could recieve an LWOP sentence and also because he was experiencing a mental health crisis and was being refused treatment medication while being housed in the Cherokee County Detention Center. (App. pgs. 67, 68, 74, 75, 88, 87) & 100.)

Plea counsel also failed to investigate the laws and facts

regarding this case.

Petitioner has also provided this Court along with his Rule 60(b) motion and reply - medical record evidence. United States v Carthorne, 878 F3d 458 (4th Cir. 2017) (Counsel's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance as would support ineffective assistance of counsel claim).

Petitioner did experience a constructive denial of counsel, and this court should presume prejudice under the second of the three distinct situations provided in United States v Cronic, 466 US 648, 104 Sct 2039 (1984), which is per-se prejudice which occurs if there has been a constructive denial of counsel. "This happens when a lawyer 'entirely fails to subject the prosecution's case to meaningful adversarial testing' thus making 'the adversary process itself presumptively unreliable'." Glover v Miro, 262 F3d 268, 275 (4th Cir. 2001) (citing Cronic.)

V Petitioner's Argument Against Precedence

This court fails to make a ruling as to Petitioner's argument

against the precedent case of State v Wakefield, 323 SC 189, 473 SE2d 831 (1996). See, Smith v Daniel Const. Co., 253 SC 248, 169 SE2d 767 (1969) ("There should be no blind adherence to a precedent which, if it is wrong, should be corrected at the first practical moment.")

As Petitioner has emphasized, future guidance should be provided through this court's adjudication of this matter as it is in public interest, public importance, and is certainly ~~capable~~ capable of repetition. Petitioner is an example of the repetition as if Wakefield was corrected he would not be litigating today.

IV. Court's Determination that All Charges Adjudicated In Same Plea Counts For One Total Strike - Precedence

Petitioner's case should be precedent as this is the only case wherein the Court is clearly stating that all charges adjudicated in the same plea counts for one total strike. Petitioner has expressed the general confusion of Bryant v State, 384 SC 525, 534, 683 SE2d 280 (2009) which results in ambiguity. Even the Supreme Court expresses the same in Bryant Today - this court can clear this such ambiguity and allow defendants and defendants' counsel to no longer be in the

dark regarding the applicability of this and the closely connected statute 17-25-50. When this Court, or any court chooses not to make things clear, not to make things applicable as precedence and clear precedence with a bright-line rule then the Court also seems to intentionally cause defendants such as Petitioner to be tricked as they are not provided opportunity for truly knowingly and intelligent decisions with regard to criminal proceedings and decisions with regard to how they will proceed.

VI The Global Resolution

This Court seems to misunderstand the fact that Plea counsel's decision to seek a "global resolution" was in-fact a decision of his own. Although, Petitioner did want to get all matter resolved, this does not mean nor equate a willingness to accept anything and especially a plea of guilty to crimes in which he was not guilty. There was no "global agreement" that Plea counsel could be ineffective and that he should fail to investigate any facts and law regarding the case, be incompetent regarding the tempers connection of the charges, "private" nature of the church, prior merged 1st offense plea that was over 10 years

old, etc. This Court cites Rollison v State, 346 SC 506, 511-12, 552 SE2d 290, 293 (2001) ("[Petitioner] received the benefit of the agreement for which he bargained and cannot now complain.") This citing contemplates a knowingly and intelligently entered bargain and plea. Citing back to Rollison, Petitioner emphasizes that, although "A defendant may, as part of a plea bargain, agree to plead guilty to a crime for which he has been indicted but of which he is not guilty", in order for this plea to stand and be legitimate, the defendant must "understand the nature and crucial elements of the charges ... and [] the record [must] reflect a factual basis for the plea." Id. In contrast to Rollison, the Petitioner was never advised of the crucial elements with regard to the proximity charges.

When taking a facial look at the indictment and finding that Petitioner was guilty of the things as written, there was no reason to challenge the indictments. Petitioner as should any other client of a person of the bar, should be able to rely on client's advice and infer that counsel knows the law and has investigated the case. This Court held in Creighton v State, 2016-UP-309 (2016), that

A defendant should not be held responsible for errors which occur when, "relying on plea counsel's advice — even though the advice was erroneous — because Creighton was not required to second-guess plea counsel's advice absent facts that would put her on notice that the advice was erroneous." See also True v Monteith, 327 SC 116, 489 SE2d 615 (1997) (explaining that, "[a] client should not be expected to investigate an attorney's loyalty every time the attorney provides the client with counsel." and "the client should be able to rely on the attorney's advice and should be able to follow this advice without fear the attorney is not acting in the client's best interest."

As Plea counsel provided ineffective assistance at the plea bargaining stage and failed to use competency during the bargaining process, this should not be determined "strategy". See Padgett v State, 324 SC 22, 484 SE2d 101 (1997)

VII Would Not Have Pled Guilty

Petitioner has emphasized that he would not have pled guilty but for counsel's erroneous advice. This was not disputed at the PCR hearing as Plea Counsel even supported this when stating that Petitioner was [redacted] being [redacted] treatment first

While in the detention center and was being refused his mental health medications.

This court errors at it attempts to re-evaluate the facts based on its own view of the preponderance of the evidence.

Albeit, Petitioner might have pled guilty, regardless to the marijuana charge for which he was guilty, he would not have pled guilty to all other charges. See Stevens v State, 365 SC 309, 617 SE2d 366 (2005) (finding ineffective assistance and prejudice existing as defendant would not have pled guilty to each and every charge).

This Court further relies on the fact that proximity charges result in a 10 year sentence which runs concurrent to Petitioner's 15 year sentence.

However, this Court fails to comprehend that Petitioner does challenge the 15 year sentence's charge as well. It is this Court that decided not to allow and hear Petitioners arguments with regard to this charge. This Court does not comprehend Petitioner's providing of his newly discovered evidence which would encompass the charge in which the 15 year sentence was received. In all, was the result of

Ineffective assistance of counsel.

VIII Preservation of All Issues

Out of an abandance of caution and in the interest of certainty Plaintiff brings to this Courts attention that he does wish to preserve all issues which was raised in his Petition for Certiorari, albeit this court chose to only grant as to one of his issues.

Secondly, the Petitioner seeks that this Court is mindful that he attempted to raise a constitutional challenge to SC Code Ann. § 44-53-470. (See Appendix pg. 148, see Petition for Writ filed on Nov. 2, 2018 pgs 19-20) See motion to Amend Petition for Writ of Certiorari and Amendment to Petition for Writ of Certiorari, filed June 10, 2019; See Alonzo C. Jeter, III v State of South Carolina, Appellate Case No. 2020-001147; See Alonzo C. Jeter, III v State, Case No. 2021-CP-11-00593 filed in Cherokee County; See Appeal of 2021-CP-11-00593 filed in South Carolina Supreme Court. Petitioner has been a victim of procedural ping-pong in his attempt to have this issue adjudicated upon. The statute becomes unconstitutional as-applied to Petitioner, *See Alonzo C. Jeter, III v State, Case No. 2023-000024

as interpreted by the PCR court, and as the Rule of Lenity is not applied in Petitioner's circumstance. Petitioner seeks this Court's assistance and guidance in obtaining an adjudication of this issue.

Lastly, Petitioner asks that this Court take Judicial notice of Petitioner's exhibits and supplemental exhibits both as been filed along with his motion for leave to file a Rule 60(6) motion. These records are in fact newly discovered and due to Petitioner's indigency along with status of incarceration he has not been afforded opportunity to obtain and present these records at any earlier time. Petitioner asks this Court to reconsider his motion for leave to file a Rule 60(6) motion. Should this court still deny leave, Petitioner asks that this Court make a determination as to whether or not the records are newly discovered, provide a hearing if there is any question to the newly discovery question, and also provide leave that Petitioner may file a PCR action based on newly discovered evidence without having to tread the hurdles of wrestling with the PCR court to prove newly discovery as the PCR courts have a practice on not respecting indigent pro se PCR applicants and therefore do not adjudicate upon such matters equitably. This Court provides no reasoning for its denial of the motion for leave to file the Rule 60(6) motion. This explanation is needed for appellate purposes.

This case has been one of so many procedural irregularities, that this Court should not ignore.

The PCR Court's allowance of the reopening of the PCR record, frustration of Petitioner's 2004 plea and terms of the plea agreement, failure to allow and compel discovery for satisfying the "evidentiary" hearing - all worked and continues to work in tandem to cause litigation harm to Petitioner.

Petitioner asks this court to take consideration, Judicial notice, and reconsideration of all of these matters.

Respectfully submitted,

Alonzo C. Jeter, III
PETITIONER/pro se
Manning Correctional Institution
502 Beckman Drive
Columbia, South Carolina 29203

This 23rd day of February, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

On Writ of Certiorari to Cherokee County
The Honorable Lee S. Alford, Plea Judge
The Honorable Robin B. Stilwell, PCR Judge

Appellate Case No. 2017-001777

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State of South Carolina,

RESPONDENT.

CERTIFICATE OF SERVICE

I, Alonzo C. Jeter, III, hereby certify that I have served the Petition For Rehearing, on Respondent by placing a copy of the same inside of a postage prepaid envelope and placing said envelope in the hands of Manning Correctional Institution's mail room personnel, on this 23rd day of February, 2023, for mailing via the United States Mail, addressed as follows: Chelsey F. Marto, AAG, Office of the Attorney General, PO Box 11549, Columbia, South Carolina 29211; The Honorable Jenny A. Kitchings, Clerk, South Carolina Court of Appeals, PO Box 11629, Columbia, South Carolina 29211.

s/

Alonzo C. Jeter, III
Manning Correctional Institution
502 Bectman Drive
Columbia, South Carolina 29203

Alonzo C. Jeter, III, #282902
Manning Correctional Institution
W-5/53B
502 Beckman Drive
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February 23, 2023

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Alonzo C. Jeter, III v State of South Carolina
Appellate Case No. 2017-001777

Dear Honorable Kitchings:

Enclosed for filing, please find the Petition For Rehearing, along with Certificate of Service.

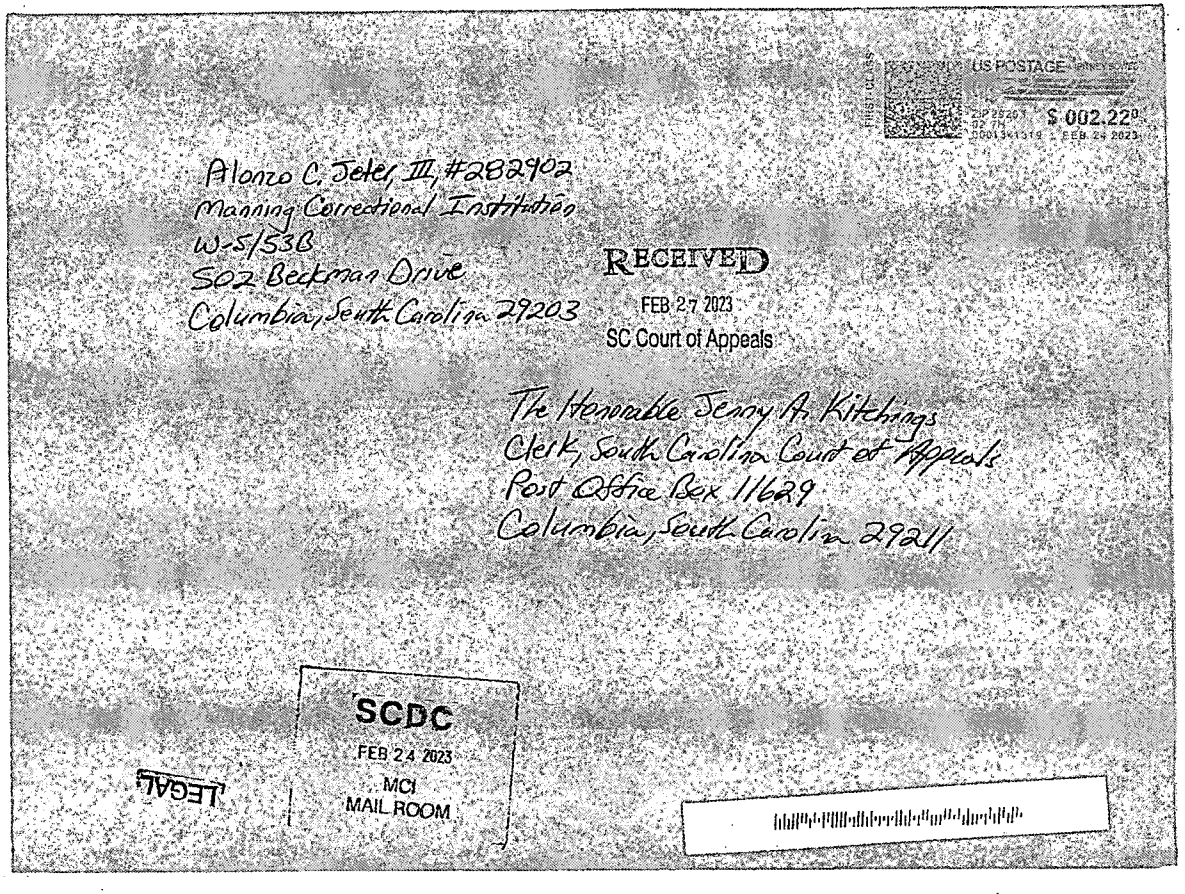
Please find enclosed also, an additional copy of the same along with a self-addressed stamped envelope.

Please return to me, file-stamped copies of these documents by way of the provided SASE.

Thank you for your assistance in this matter.

Sincerely,

Alonzo C. Jeter, III



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