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THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. SUPREME COURT

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PETITION FOR WRIT OF CERTIORARI TO  
FLORENCE COUNTY COURTS OF

HON. DONALD B. HOCHER, GENERAL SESSIONS  
HON. GEORGE M. McFADDEN, JR., COMMON PLEAS

APPELLATE CASE NO. 2021-001329

TAMARQUIS WINGATE,

PETITIONER,

VS.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION  
FOR A  
WRIT OF CERTIORARI  
IN THE ORIGINAL JURISDICTION

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## QUESTIONS PRESENTED FOR REVIEW

THIS CASE PRESENTS THE FOLLOWING IMPORTANT AND CONSTITUTIONAL CHALLENGED QUESTIONS ON WHICH THE SOUTH CAROLINA LOWER COURTS FAILED TO FIND RELIEF IN PETITIONER'S FAVOR:

- I. WHETHER THE STATE'S POST-CONVICTION COURT ERRED, WHEN DUE PROCESS REQUIRES THE VERY APPLICATION OF SETTLED CONSTITUTIONAL RULINGS IN EFFECT AT THE TIME A CONVICTION BECAME FINAL?
- II. WHETHER THE TRIAL MEASURED UP TO ESTABLISHED PRINCIPLES SPECIFIED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, FORBIDS THE IMPOSITION OF INVOLUNTARY SERVITUDE AS STATED IN SECTION 1 OF THE THIRTEENTH AMENDMENT?
- III. WHETHER THE LOWER COURT ERRED WHEN FAILED TO ADDRESS THE CORE CONTENTION THAT THE CREDIBILITY ANALYSIS USED, CONSTITUTED AN INDEPENDENT CONSTITUTIONAL VIOLATION, AND BY ALSO REJECTING THE MERITS WAS EGREGIOUSLY HARMFUL?
- IV. WHETHER THE LOWER COURT AGAIN ERRED WHEN NO REVIEW OF PREJUDICE WAS DETERMINED IN ITS PROCEEDINGS TO THE SUBSTANTIVE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, WHEN NO ERROR WAS FOUND BY THE DISMISSAL OF THE DIRECT APPEAL?

1/35 (70)

## INTRODUCTION

PETITIONER, TAMARA LUS ANTONIO WINGATE, DO RESPECTFULLY REQUEST THAT THIS COURT REVERSE THE JUDGMENTS HAD BY THE LOWER COURTS. THE WRIT IS BEING SOUGHT TO CORRECT A SUBSTANTIAL ERROR OF LAW, APPARENT ON THE RECORD, WHEN THE SUBSTANTIAL ENDS OF JUSTICE REQUIRES RELIEF.

## OPINION BELOW

THE OPINION/DISMISSAL OF THE S.C. COA IS NOW AVAILABLE AT [2017 WL 436500]. THE ORDER WAS ENTERED ON FEBRUARY 01, 2017. (PET. APP. 353-354).

## JURISDICTION

THE PETITIONER MAKE THE FOLLOWING STATEMENT AS TO THE JURISDICTION OF THE SUPREME COURT OF SOUTH CAROLINA, TO REVIEW A FINAL DECISION OF THE LOWER COURT AS STATED IN RULE 71.1, SCRPC. PERHAPS IN ITS ORIGINAL JURISDICTION OF CHALLENGED STATUTE, IN ACCORDANCE WITH RULE 245, SCRPC.

WHETHER THE FOR COURT HAD THE POWER OF THE JURISDICTION TO MAKE THE ORDER OF DISMISSAL? AND/OR WHETHER IT ACTED WITHIN OR EXCEEDED ITS JURISDICTION BEING THAT RELIEF ACTUALLY WAS TO ALREADY BEEN HAD ON DIRECT APPEAL IN THE COURT OF APPEALS?

THERE IS ACTUAL JUSTIFIABLE CONTROVERSY, AND REQUESTING A RENDERING OF A DECLARATORY RELIEF IN ITS JUDGMENT PURSUANT TO RULE 57, SCRPC.

## JURISDICTION (CONT.)

TO REVIEW A FINAL JUDGMENT, WHERE IS DRAWN INTO QUESTION THE VALIDITY OF THE CONVICTION OF A STATUTE OF SUCH STATE USED ON THE GROUND OF ITS BEING REPUGNANT TO THE UNITED STATES CONSTITUTION, THE CONSTITUTION OF SOUTH CAROLINA, AND SOUTH CAROLINA STATE LAWS. A MOTION TO VACATE AND SET ASIDE JUDGMENT IN ACCORDANCE WITH RULE 60(b)(6), SCRPC.

HOWEVER THIS IS A CIVIL ACTION THAT IS AUTHORIZED BY S.C. CODE ANN. § 17-27-100: KNIGHT V. STATE, 284 S.C. 138, 325 S.E.2D 535 (1985), BY RULE 243, SCRPC; RULE 201, SCRPC. FOR PETITION FOR WRIT OF CERTIORARI IN POST-CONVICTION RELIEF ACTIONS, AND THIS COURT IS ITS LAST RESORT.

### RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

THE 5TH AMENDMENT PROVIDES:

"NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF."

THE 6TH AMENDMENT PROVIDES:

"TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE."

THE 8TH AMENDMENT PROVIDES:

"NOR CRUEL AND UNUSUAL PUNISHMENT INFLICTED."

THE 9TH AMENDMENT PROVIDES:

"OF CERTAIN RIGHTS SHALL NOT BE CONSTRUED TO DENY OR DISPARAGE OTHERS RETAINED BY THE PEOPLE."

THE 13TH AMENDMENT PROVIDES:

"NEITHER SLAVERY NOR INVOLUNTARY SERVITUDE EXCEPT AS A PUNISHMENT FOR CRIME WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED."

THE 14TH AMENDMENT PROVIDES:

"NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY,

Without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

THE 15th Amendment provides:

"THE RIGHT OF CITIZENS OF THE UNITED STATES TO VOTE SHALL NOT BE DENIED OR ABRIDGED BY THE UNITED STATES OR BY ANY STATE ON ACCOUNT OF RACE, COLOR, OR PREVIOUS CONDITION OF SERVITUDE."

STATUTORY PROVISIONS:

UNDER ARTICLE 5 SECTION 17 OF THE S.C. CONSTITUTION:

"A TRIAL JUDGE MAY NOT, EXPRESSLY OR BY IMPLICATION, INTIMATE ANY OPINION AS TO THE FORCE AND EFFECT OF TESTIMONY IN THE CASE."

UNDER ARTICLE 5 SECTION 17 OF THE S.C. CONSTITUTION:

"CONSTITUTED AN IMPERMISSIBLE COMMENT ON THE TESTIMONY GIVEN IN THE CASE REQUIRING REVERSAL."

UNDER ARTICLE 5 SECTION 26 OF THE S.C. CONSTITUTION:

"THE TRIAL JUDGE MUST REFRAIN FROM ALL COMMENTS WHICH TENDS TO INDICATE HIS OPINION AS TO THE WEIGHT OR SUFFICIENCY OF EVIDENCE, THE CREDIBILITY OF WITNESSES, THE GUILT OF THE ACCUSED, OR AS TO CONTROVERTED FACTS."

CODE 1976 § 17-19-100 PROVIDES:

"IF (A) THERE BE ANY DEFECT IN FORM IN ANY INDICTMENTS OR (B) ON THE TRIAL OF ANY CASE THERE SHALL APPEAR TO BE ANY VARIANCE BETWEEN THE ALLEGATIONS OF THE INDICTMENT AND THE EVIDENCE OFFERED IN PROOF THEREOF, THE COURT BEFORE WHICH THE TRIAL SHALL BE HAD MAY AMEND THE INDICTMENT (ACCORDING TO THE PROOF, IF THE AMENDMENT BE BECAUSE OF A VARIANCE) IF SUCH AMENDMENT DOES NOT CHANGE THE NATURE OF THE OFFENSE CHARGED.... UNLESS SUCH AMENDMENT SHALL OPERATE AS A SURPRISE TO THE DEFENDANT, IN WHICH CASE THE DEFENDANT SHALL BE ENTITLED, UPON DEMAND, TO A CONTINUANCE OF THE CAUSE."

# STATEMENT OF THE CASE

## LEGAL BACKGROUND

IN STATE V. STUKES, 416 S.C. 493; 787 S.E.2d 480 (MAY 04, 2016), THE ISSUE PRESENTED WAS "DID THE LOWER COURT ERR BY CHARGING THE JURY THAT A VICTIM'S TESTIMONY NEED NOT BE CORROBORATED BY ADDITIONAL EVIDENCE."

STUKES ARGUES THAT THE TRIAL COURT ERRED IN CHARGING S.C. CODE ANN. SECTION § 16-3-657, ON THE BASIS THAT A VICTIM'S TESTIMONY NEED NOT BE CORROBORATED WITH ADDITIONAL EVIDENCE.

THIS COURT AGREED BY STATING THAT THIS FORM OF A CHARGE IS AN IMPERMISSIBLE CHARGE ON THE FACTS AND THEN OVERRULED PRECEDENT TO THE CONTRARY. IN CONCLUSION OF STUKES THE COURT HELD: "BASED ON THE FOREGOING, WE OVERRULE OUR PRECEDENT TO THE EXTENT IT CONDONED THE USE OF SECTION § 16-3-657, AS A JURY CHARGE."

ADDITIONALLY, THE COURT FOUND THE ERROR HAD WAS NOT HARMLESS AND THEN REVERSE AND REMAND FOR A NEW TRIAL. THIS COURT FURTHER ELABORATED "THAT OUR RULING IS EFFECTIVE IN THIS CASE AND THOSE WHICH ARE PENDING ON DIRECT REVIEW OR ARE NOT FINAL - BUT NOT IN POST-CONVICTION REVIEW." IN THE INSTANT CASE PETITIONER'S DIRECT REVIEW WAS PENDING, AND WAS NOT FINAL UNTIL 1 1/2 YRS AFTER STUKES.

5/35 (TW)

## FACTUAL AND PROCEDURAL BACKGROUND

1. PETITIONER WAS INITIALLY ARRESTED ON, APRIL 04, 2014, FOR [CRIMINAL SEXUAL CONDUCT WITH MINOR] - 3RD DEGREE - COMMIT/ATTEMPT LEWD ACT (VICTIM UNDER 16 & ACTOR OVER 14 YRS); AND [CRIMINAL SEXUAL CONDUCT WITH MINOR, OR ATTEMPT - VICTIM 11 TO 14 YRS OF AGE INCLUSIVE] - SECOND DEGREE; THE NEXT DAY THE PETITIONER FILED FOR A PRELIMINARY HEARING (PET. APP. P. 561).

THE STATE PLEA OFFER WAS TO PLEA AS CHARGE TO 15 YRS CONCURRENT (PET. APP. P. 3393 50), HOWEVER UPON A DENIAL FROM THE PETITIONER THE STATE ELECTED TO INDICT. A GRAND JURY OF FLORENCE COUNTY DID SO INDICTED PETITIONER FOR CSC W/MINOR THIRD DEGREE AND CSC W/M - SECOND DEGREE ON AUGUST 28, 2014.

SUBSEQUENTLY, PETITIONER WAS INDICTED BY THE VERY SAME GRAND JURY, BUT THIS TIME FOR [CRIMINAL SEXUAL CONDUCT W/MINOR] 1st DEGREE (2 COUNTS) ON NOVEMBER 20, 2014. (PET. APP. P. 500 + 501).

DURING PETITIONER'S TRIAL HAD DECEMBER 09-10, 2014, THE TRIAL COURT AMENDED THE ELEMENTS OF THE INDICTMENT, (PET. APP. TR. P. 461 lines 9-14; P. 234 Lines 10-16) WHICH ACTED AS A COMPLETE SURPRISE TO PETITIONER, WHICH ALSO ALLOWED THE VOUCHING FOR ALLEGED VICTIMS TESTIMONY, ALLOWED THE MISUSE OF PETITIONER'S PRIOR, AND COMMENTED ON THE FACTS OF THE CASE, AS WELL AS ESTABLISHED AN ELEMENT FOR THE TRUE FACT FINDER.

AFTER DELIBERATING FOR ONLY 42 MINUTES, PETITIONER WAS CONVICTED FOR 2 COUNTS OF 1ST DEG. CRIMINAL SEXUAL CONDUCT WITH A MINOR. (RET. APP. P. 505) SENTENCED TO TWENTY YEARS (CONCURRENT) TO INCLUDE SEXUAL VIOLENT PREDATOR PROCEEDINGS. THE ORIGINAL INDICTMENTS WERE THEN NOLLE PROSECUT. (RET. APP. P. 509). IN TOTAL THE TRIAL LASTED 6 HOURS 5 MINUTES.

PETITIONER'S TRIAL COUNSEL APPEAL THE CONVICTION BUT APPEALED FOR [CSC w/m] 2ND DEGREE (RET. APP. P. 511).

APPELLATE COUNSEL AFTER (6) EXTENSIONS FILED AN "ANDERS BRIEF" AND MOTION TO BE RELIEVED AS COUNSEL. (RET. APP. P. 269), ON OCTOBER 23, 2015:

PETITIONER FILED HIS INITIAL PRO SE BRIEF ON APRIL 26, 2016, (RET. APP. PROSE P. 276). PETITIONER DID AMEND IN SUM, BY RELYING ON STUKES, IN SUPPORT OF VACATING THE ERRONEOUS CONVICTIONS AND ITS SENTENCES. (RET. APP. PROSE P. 283) IN THAT STUKES SUFFERED IDENTICAL ERRORS FOUND IN PETITIONER'S CASE. HOWEVER, BECAUSE OF THE INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSELS THE COURT DECIDED TO CONSIDERED THE PRO SE BRIEFS. (RET. APP. PROSE P. 308-353).

FEBRUARY 01, 2017, THE COURT OF APPEALS DISMISSED THE DIRECT APPEAL UNDER ITS "ANDERS" REVIEW PROCESS. (RET. APP. PROSE P. 353). PETITIONER IN DUE DILIGENCE FILED FOR RE HEARING (RET. APP. PROSE P. 353) BUT DENIED (RET. APP. PROSE P. 353)

PETITIONER SOUGHT POST-CONVICTION RELIEF AND FILED AN APPLICATION AND SUPPORTING MEMORANDUM WITH THE LOWER COURT ON MARCH 05, 2018 (PET. APP. P. 3164). THE STATE RETURN FILED 94 DAYS AFTERWARDS ON JUNE 07, 2018, SHOULD BE IN DEFAULT (PET. APP. P. 387).

PETITIONER MOVED TO FILE A MOTION TO ACT AS CO/COUNSEL (PET. APP. P. 648), BUT WAS ALSO DENIED (PET. APP. P. 658).

OVER THREE (3) YRS. LATER, AN EVIDENTIARY HEARING WAS HAD ON AUGUST 31, 2021. BASED ON THE CLAIMS IN THE APPLICATION AND SUPPORTING MEMO TO INCLUDE CLAIMS AND ISSUES THAT CAME ABOUT DURING THE HEARING.

ON OCTOBER 20, 2021, THE STATE BY WAY OF YASMEEN KHAIR, SENT THE (FOR) COUNSEL A FILED ORDER OF DISMISSAL WITH PREJUDICE. (PET. APP. P. 399).

A TIMELY NOTICE OF APPEAL WAS HAD WITHOUT REGARDS TO A 59(c) MOTION ON NOVEMBER, 2021. THIS COURT GRANTED PETITIONERS APPLICATION AND REQUEST TO PROCEED PRO SE ON SEPT. 14, 2022.

PETITIONER APPLIED FOR AN APPELLATE REVIEW BOND, SHOWING CAUSE AND ACTUAL PREJUDICE, ESPECIALLY AND MORE IMPORTANTLY TO HIS CLAIM OF ACTUAL INNOCENCE ON NOVEMBER 09, 2022.

THE APPELLATE BOND WAS DENIED ON DECEMBER 13, 2022, THE ONLY REASON BECAUSE THE STATE OPPOSED. A REPLY WAS FILED DECEMBER 14, 2022.

THIS PETITION FOR A WRIT OF CERTIORARI IN A POST-CONVICTION RELIEF ACTION IS AS FOLLOWS:

## SUMMARY OF ARGUMENTS

PETITIONER WHO IS ACTUALLY INNOCENT, WAS DENIED HIS CONSTITUTIONAL RIGHTS TO BE FAIRLY HEARD IN COURT. UNFORTUNATELY A FAMILY CAN ACCUSE ANYBODY OF A SEXUAL CRIME IN SOUTH CAROLINA WITHOUT ANY PROOF OF SUCH.

THIS IS AN EXCEPTIONAL CASE AND IS NOT FRIVOLOUS OR TAKEN FOR DELAY, AND THE ISSUES HERE ARE NOW SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE IN THE RECORD OF THE APPELLATE

THE ARGUMENTS ARE OF SUBSTANTIAL NATURE UPON WHICH THE PETITIONER HAVE HIGH PROBABILITY OF SUCCESS, BUT ARE SIMPLE IN WHICH WAY THIS COURT'S DECISION SHOULD GO. THE COMPLEXITY OF THE LOWER COURTS AND THE DEPRIVATIONS AND DAMAGES OF THE ADJUDICATIONS HAD RESULTED IN AN UNLAWFUL CONVICTION/SENTENCES AND TO INCLUDE ITS DELAYS.

9/35 (7)

THE FINALITY OF THE CLAIMS IS PRESENTED TO THIS COURT TO PROPERLY INTERPRET THE RULINGS IN EFFECT AT THE TIME OF PETITIONER'S DIRECT REVIEW: (1) ACTUAL INNOCENCE; (2) THE JURY TRIAL HAD AND ITS INDICTMENT(S); (3) THE PCR JUDGE DOES NOT INCLUDE THE SPECIFIC FINDINGS OF FACTS AND CONCLUSIONS OF LAW RELATING TO EACH ISSUE PRESENTED. IN SO, MAKING A PRIMA FACIE DELAY IN THAT BEING IN COMPLETE BY THE APPLICABLE LAW, MAKING THE ORDER NOT REVIEWABLE BY WRIT OF CERTIORARI BECAUSE OF ITS INSUFFICIENCY IN THE LOWER COURT'S FAILURE TO RULE UPON ALL OF THE ISSUES.

THE CIRCUIT COURT'S ORDER DISMISSING A PORTION OF PETITIONER'S CLAIMS, CONSTITUTES AN ABUSE OF DISCRETION. SEPARATELY REQUIREING RELIEF, BY CLOAKING THE ISSUES WHICH IS FAR FROM AN INDEPENDENT AND ADEQUATE STATE AND FEDERAL GROUNDS FOR ITS DECISIONS.

MUCH OF THE ARGUMENT IN THIS BRIEF CUT STRAIGHT TO THE CORE ISSUES AND INVITES THIS COURT TO BE INVOLVED IN AND BE SUPPORTIVE OF THE SIMPLE QUESTIONS ABOUT THE POWER OF LOWER COURT'S INDIFFERENCE TO SUBJECT INDIGENT PERSONS TO DISCRIMINATORY STANDARDS AND INVOLVED AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED LAW WHICH IS AGAINST PUBLIC ORDER.

## ARGUMENT I.

DUE PROCESS REQUIRES STATE COURTS TO APPLY SETTLED CONSTITUTIONAL RULINGS IN EFFECT AT THE TIME A CONVICTION BECAME FINAL.

PETITIONER'S DIRECT REVIEW WAS BETWEEN DECEMBER 22, 2014 THROUGH JULY 24, 2017, WHEN THE REMITTURE CAME TO BE (PET. APP. P. 363). THE PETITIONER CONTENDS THAT HE WAS DEPRIVED OF THE RIGHTS GUARANTEED BY THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION. EXPLAINING TO THE COURT OF APPEALS THAT ITS DISMISSAL WAS IN DIRECT CONFLICT WITH THE SUPREME COURT'S PRECEDENT. THE DIRECT APPEAL ORDER AND DECISION WAS INEQUITABLE BECAUSE IT ARBITRARILY REWARDED ONE APPELLANT AND PUNISHED PETITIONER (PET. APP. P. 353).

A NEW CONSTITUTIONAL RULE OF CRIMINAL PROCEDURES SHOULD NOT APPLY TO CASES THAT BECAME FINAL BEFORE THE NEW RULE IS ANNOUNCED. ATHEN V. BYARS, 410 S.C. 534, 765 S.E.2d 572 (2014), CERT. DENIED, 135 S.Ct. 2379 (2015). "A DENIAL OF DUE PROCESS OCCURS WHEN A DEFENDANT IN A CRIMINAL TRIAL IS DENIED THE FUNDAMENTAL FAIRNESS ESSENTIAL TO THE CONCEPT OF JUSTICE." STATE V. HORNSBY, 326 S.C. 121, 129, 484 S.E.2d 869 (1997).

A NEW RULE OF CRIMINAL LAW SHOULD BE APPLIED RETROACTIVELY TO CASES PENDING ON DIRECT APPEAL AT THE TIME THE NEW DECISION IS ISSUED, UNLESS THE NEW RULE RESULTS IN A FINDING THAT THE TRIAL COURT ACTED WITHOUT JURISDICTION OR THE TRIAL COURT'S ACTION IS VOID BECAUSE THE DEFENDANT'S CONDUCT IS NOT SUBJECT TO CRIMINAL SANCTION, IN WHICH CASE THE NEW RULE SHOULD BE FULLY RETROACTIVE AND APPLIED TO ALL PREVIOUS CASES. STATE V. MEANS, 367 S.C. 374, 626 S.E.2d 348, n.3 (2006); STATE V. JONES, 312 S.C. 100, 439 S.E.2d 282 (1994).

PETITIONER'S DECISION TO EXERCISE OR TO BRING TO THE COURT'S ATTENTION THE ENTITLEMENT WAS NOT ENTERTAINED, AND THESE IMPROPER HINDRANCES CONTINUE TO CAUSE THIS UNLAWFUL CUSTODY.

A.) DUE PROCESS REQUIRES AN IRREDUCIBLE MINIMUM OF ADEQUATE PROCEDURES

AT A MINIMUM DUE PROCESS REQUIRES AND INCLUDES THE RIGHT TO BE HEARD ON, AND ALSO EQUAL TREATMENTS IN ADJUDICATIONS. THE COURT OF APPEALS EMPLOYED A DEFICIENT STANDARD OF REVIEW WHEN IT HAD A CLEAR AND PRESENT OFFICIAL DUTY TO PERFORM. PETITIONER HERENOW SUBMITS THAT THE "ANDERS" PROCESS HAD IN HIS CASE WAS PLAIN ERROR THAT AFFECTED HIS SUBSTANTIAL RIGHTS.

12/2/85 (TW)

PETITIONER, DID SO, OPENLY BEFORE THE COURT OF APPEALS REQUESTED EFFECTIVE ASSISTANCE OF COUNSEL (PET. APP. P. 29-300). THIS DOCUMENT WAS FILED TO SEEK A FAIR AND EFFECTIVE ADVOCATE AS OF RIGHT. THE PETITIONER THEN ASK THE COURT OF APPEALS TO ANALYZE THE PROPER STANDARD OF COUNSEL'S OPEN INEFFECTIVENESS THAT WAS FILED IN THE SUPPLEMENTAL BRIEF AND APPENDIX ON DEC. 09, 2010. (PET. APP. P. 308-353).

UNFORTUNATELY THE COURT OF APPEALS FAILURE TO PERFORM WAS SO ARBITRARY AND CAPRICIOUS AS TO CONSTITUTE CLEAR ABUSE OF DISCRETION, THIS WAS ESTABLISHED IN PETITIONER'S (7) FILINGS. PURSUANT TO ANDERS V. CALIFORNIA, 386 U.S. 738 (1967), FAILURE TO GRANT AN INDIGENT APPELLANT SEEKING JUDICIAL REVIEW OF HIS CONVICTION, THE SERVICES OF AN ADVOCATE AS CONTRASTED WITH AN (AMICUS CURIAE), WHICH WOULD HAVE BEEN AVAILABLE TO AN APPELLANT WITH FINANCIAL MEANS, VIOLATED PETITIONER'S RIGHTS TO FAIR PROCEDURES AND EQUALLY UNDER THE 14<sup>TH</sup> AMENDMENT. (FILED SEPT. 08, 2010) (PRO SE - 11 PAGES) (PET. APP. P. 290-300).

DURING DIRECT REVIEW PETITIONER HAD SEVERAL ARGUABLE CLAIMS, AND IF A PROPER EXAMINATION WAS HAD, THEN THE COURT OF APPEALS WOULDVE AGREE THAT THE "ANDERS" BRIEF WAS SO HIGHLY QUESTIONABLE, AND A REASONABLE APPLICATION OF THE IDEO RULING ENTITLED (HIM) TO A REVERSAL.

B) IN CONFORMITY WITH THE TEAGUE AND YATES, AND ESPECIALLY IN GRIFFITH V. KENTUCKY, GROUNDS THIS COURT'S RULING AND ITS BENEFITS OF THE LAW AS CONSTITUTIONALLY UNDERSTOOD.

PETITIONER CLEARLY SHOWS, WITHOUT THE NEED TO SAY TOO MUCH MORE, THAT THE LOWER COURTS CAUSED UNDUPLICATE HARSHIPS IN NOT APPLYING PRECEDENT AND NOT ADHERING TO IT ON A SUBSEQUENT DIRECT APPEAL. THE PENDENCY OF PETITIONER'S DIRECT REVIEW WHEN THIS COURT'S DECISION IN STATE V. STUBBS WAS HAD PROVES THIS CRIMINAL CASE WAS NOT YET FINAL. THIS ACTION, ARGUABLY VIOLATES TRADITIONAL CONCEPTS, AND BASIC NORMS OF ADJUDICATIVE FUNCTIONS.

PETITIONER ALLEGES (PERHAPS A MISTAKE) THAT HE HAS BEEN OVERLOOKED OR INTENTIONALLY TREATED DIFFERENTLY FROM OTHERS SIMILARLY SITUATED AND WAS TO BE SUBSTANTIALLY EQUAL WITH RESPECT TO EXPEDITED RELIEF, BY WAY OF A NEW TRIAL.

STUBBS DECISION WROTE AND RECOGNIZED BY THE PETITIONER, SHALL BE GIVEN THE BENEFIT OF ITS RULING, DUE TO THE FACT THAT EVEN HANDED JUSTICE REQUIRES THAT IT BE, IN PART OF THE RETROACTIVITY ANALYSIS FOR CASES PENDING AT THAT TIME. SEE: GRIFFITH V. KENTUCKY, 479 U.S. 314, 322, 107 S.Ct. 708, 713, 93 L.Ed.2d 649 (1987); YATES V. ARIZONA, 484 U.S. 211, 108 S.Ct. 536, 98 L.Ed.2d 546 (1988); TEAGUE V. LANE, 103 L.Ed.2d 334 (1989).

## ARGUMENT II.

THE DUE PROCESS CLAUSE OF THE 14<sup>th</sup> AMENDMENT SPECIFICALLY THAT WHEN THE TRIAL DOES NOT MEASURE UP TO THE ESTABLISHED PRINCIPLES, DO FORBID THE PETITIONER TO BE IMPOSED TO ANY INDUSTRIAL SERVITUDE AS STATED IN SECTION (1) OF THE 13<sup>th</sup> AMENDMENT.

PETITIONER WAS NOT PROPERLY CONVICTED OF THE OFFENSE AND ELEMENTS CHARGED IN THE INDICTMENT. A DEFENDANT MUST BE CONVICTED, IF CONVICTED AT ALL, OF THE PARTICULAR OFFENSE AND ELEMENTS CHARGED IN THE BILL OF INDICTMENT. ARIZONA V. RAMSEY, 416 U.S. 203, PERHAPS QUESTIONING AND/OR STRIPPING THE PERSONAL AND/OR SUBJECT MATTER JURISDICTION, IN THAT REGARD.

THE TRIAL JUDGE ERRED BY ABUSING HIS DISCRETION BY IMPROPERLY, AND UNREASONABLY AMENDED ELEMENTS OF (CSC) w/m - 1<sup>st</sup> deg., UNDER § 16-3-655(A)(2), OF THE SO. CODE OF LAWS, 1976, WHICH IS RECORDED AS FOLLOWS:

(A) A PERSON IS GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST DEGREE IF:

(2) THE ACTOR ENGAGES IN SEXUAL BATTERY WITH A VICTIM WHO IS LESS THAN SIXTEEN YEARS OF AGE, AND THE ACTOR HAS PREVIOUSLY BEEN CONVICTED OF..... § 23-3-431(C); OR HAS BEEN ORDERED TO BE INCLUDED ON THE SEX OFFENDER REGISTRY..... § 23-3-431(D); (PET. APP. TR. Pg. 41, LINES 11-19)

HOWEVER, PETITIONER CONTENDS AS STATED AT THE EVIDENTIARY HAD, ON AUG. 30, 2021 (PET. APP. PCR. TR. P. 12) THAT ONLY (1) DAY BEFORE TRIAL HE WAS TOLD ABOUT THE SUPERCEDING JUDGMENT, WHICH WAS NOT TRUE-BILLED, (PET. APP. PAGE 70); STATING:

THAT TAMAROUS ANTWAIN WASHINGTON IN FLORENCE COUNTY....., LEGALLY AND UNLAWFULLY COMMIT, OR ATTEMPT TO COMMIT, A SEXUAL BATTERY IN AND UPON A CHILD WHO IS LESS THAN SIXTEEN (16) YEARS OF AGE....., PREVIOUSLY BEEN CONVICTED OF,.... LISTED IN SECTION 23-03-0430(C), AND/OR HAS BEEN ORDERED TO BE INCLUDED IN THE SEX OFFENDER REGISTRY....., 23-03-0430(D); AND VIOLATION OF SECTIONS 16-03-0655(A)(2)(D)(2) AND 16-03-0656.....

THE TRIAL COURT AMENDED "THE CHARGE ON THE LAW" AS TO THE ELEMENTS OF THE OFFENSE DURING TRIAL AS FOLLOWS:

- (1) ALLEGED VICTIM IS UNDER AGE OF (16);
- (2) DEFENDANT COMMITTED SEXUAL BATTERY ON VICTIM AND
- (3) THE DEFENDANT HAS PREVIOUSLY BEEN ORDERED TO BE INCLUDED IN THE SEX OFFENSE REGISTRY PURSUANT TO SECTION 23-04-430(d).

(PET. APP. TR. P. 46, LINES 9-14; P. 50, LINES 25 - P. 51 LINE 6; P. 196, LINES 5-7; P. 234, LINES 10-16). ALSO STATED THE COURT MADE SECTION TO ONE OF THE ELEMENTS TWICE; ONCE AT THE BEGINNING OF TRIAL (PET. APP. TR. P. 51, LINES 4-6) AND ONCE MORE TOWARDS THE END OF TRIAL (PET. APP. TR. P. 234, LINES 14-16); AS IF MAKING THEIR OWN LAWS AND STATUTES.

WHEREFORE, THE TRIAL COURT RETAINED AN "AFFIRMATIVE DUTY" TO PROVIDE THE JURY WITH THE "ACCURATE" ELEMENTS OF CSC - W/M - 1ST DEG, AS OUTLINED WITHIN THE STATUTE, WITH THIS FAILURE TO COMPLY, RESULTED IN A HIGHLY PREJUDICIAL ERROR. MOREOVER, IF THE COURT OR PROSECUTOR NEEDED TO AMEND/CHANGE THE INDICTMENT, SUCH WOULD HAVE TO BE RESUBMITTED TO THE GRAND JURY, STORRE V. U.S., 361 U.S. 212 (1960). THE COURT FIRST MENTIONING THE SUBSEQUENT INDICTMENTS, NOT TO MENTION THE AMENDMENTS OF SUCH, DURING TRIAL, CREATED AS A "SURPRISE" TO THE PETITIONER. UNDISPUTEDLY, THE TRIAL COURT MISPERCEIVED THE ELEMENTS OF THE OFFENSE AND THIS MISINFORMATION WAS A COMPLETE ERROR. ARIZONA V. RAMSEY, SUPRA.

A.) IT IS UNLAWFUL TO BE HELD IN CUSTODY, WHEN NOT DULY CONVICTED, BY NOT HAVING EVIDENCE OF GUILT.

PETITIONER SUBMIT THAT THE ALLEGED VICTIM DID MAKE (5) STATEMENTS, WHICH WAS ENTIRELY DIFFERENT IN HIS TESTIMONY AT THE TRIAL. FOR INSTANCE, IN THE FIRST STATEMENT HE STATED: "FORCED HIM DOWN AND HAD ORAL SEX WITH HIM." (PET. APP. P. 518) THE SECOND STATEMENT STATED: "THE NEXT NIGHT HE GAVE ME HEAD AND THEN HE WANTED ME TO PUT IT INSIDE HIM..... HE WOULD HIT ME ABOUT A HUNDRED TIMES." (PET. APP. P. 519); DURING THE ALLEGED VICTIMS FORENSIC INTERVIEW, IT WAS SAID: "I ASKED IF HE EVER THREATENED HIM IN ANY WAY OR IF HE DID ANYTHING TO MAKE HIM FEEL SCARED. HE SAID NO," (PET. APP. P. 536).

DURING TRIAL THE ALLEGED VICTIM DID NOT MENTIONED ORAL SEX OR HEAD, NOR THAT THE PETITIONER EVER HIT HIM. (PET. APP. TR. P. 61 LINE 9 - P. 62 LINE 18; P. 64 - LINES 17 - P. 66 LINE 21).

11/7/85 (TW)

Any REASONABLE FACT FINDER WOULD NOT CREDIT THE ALLEGED VICTIM'S STORY. THE PETITIONER QUESTIONS THE LEGAL SUFFICIENCY OF THE EVIDENCE OF SEXUAL BATTERY, AS WELL AS THE STIPULATION OVERTHROWING AND ROBBERING THE EVIDENCE OF MUCH OF ITS FAIR AND LEGITIMATE WEIGHT. U.S. V. FRAZIER, 280 F.3d 835 (8th Cir. 2002). THE ALLEGATIONS ARE IN SUBSTANTIAL.

B.) STATE LAW IN PROVIDING THE SUBSTANTIVE ELEMENT OF THE CRIMINAL OFFENSE IN WHICH DUE PROCESS REQUIRES TO PROVE SUCH OFFENSE IS PURELY A MATTER OF FEDERAL LAW.

PETITIONER'S GUILT WAS NOT OVERWHELMING AND COULD HAVE OFFER EVIDENCE SUFFICIENT TO TIP THE SCALE EXPLICITLY IN HIS FAVOR, BY CERTAINLY TESTIFYING, TO INCLUDE TESTIMONY OF OTHER ACCUSED PERSON(S). EVIDENCE SHOWS THAT ELEMENTS OF OFFENSE IS IN QUESTION AND WERE NOT PROVED BEYOND A REASONABLE DOUBT, IF AT ALL WAS WITHOUT THE ASSISTANCE BY THE TRIAL COURT.

THE PROSECUTOR'S IMPROPER USE OF NAME-CALLING AND EMOTIONALLY APPEALS DURING CLOSING ARGUMENT, INCLUDING CALLING PETITIONER: "CHILD PREDATOR," VIOLATED HIS DUE PROCESS RIGHTS (PET. APP. TR. P 214, LINE 2).

THE ABSENCE OF THE ERRORS HAD AT TRIAL CAN BE SAID; THE OUTCOME WOULD HAVE BEEN DIFFERENT. EVIDENCE OF PETITIONER'S GUILT WAS NOT PLENTYFUL NOR COMPELLING. < U.S. CONST. AMEND. 5 >.

## ARGUMENT III

THE LOWER COURT ERRED BY THE FAILURE TO ADDRESS THE CORE CONTENTION THAT THE CREDIBILITY ANALYSIS USED, CONSTITUTED AN INDEPENDENT CONSTITUTIONAL VIOLATION AND COMPLETE REJECTION OF THE MERITS, WAS OF AN EGREGIOUS HARMFUL MAGNITUDE.

THE CORE CONTENTION OF THE PETITIONER'S CLAIMS ARE CONSTITUTIONALLY SIGNIFICANT, IN THAT HE WAS IMPROPERLY CONVICTED BASED ON SOME FORBIDDEN DISCRIMINATORY STANDARDS. ONE OF THOSE ERRORS, CAN BE DISCERNED THAT A FACT-INTENSIVE CASE IS THAT PETITIONER WAS DENIED A "FAIR OPPORTUNITY TO DEFEND AGAINST THE STATE'S ACCUSATIONS," WHEN CRITICAL EVIDENCE, FAVORABLE TO HIM WAS EXCLUDED. THE SECOND ERROR WAS THE LOWER COURT'S ERRONEOUS EXCERPTARY QUOTES. WITH THESE COMBINED ERRORS, THE VIOLATION TO THE LEVEL OF DUE PROCESS AND ITS VIOLATION. SEE MONTANA V. EGGLHOF, 518 U.S. 37, 53, 116 S.Ct. 2013, 135. L.Ed.2d 261 (1996) (plurality opinion).

WHETHER THE DISCRIMINATORY PURPOSE INTENDED TO PUNISH, A POOR, BLACK, SEX-OFFENDER? THIS CASE AND THE DISCRIMINATIVE AFFECT WAS PREJUDICIAL IN THAT NO OTHER FACTS ON RECORD COULD HAVE CONVICTED THE PETITIONER OF THE CRIMES CHARGED OUTRIGHT.

19/35 (TW)

THE QUESTION IS WHETHER EQUAL PROTECTION VIOLATIONS BEING BASED ON PRELIMINARY DISCRIMINATORY CLASSIFICATIONS. OTHER PERSONS ACCUSED (PET. APP. P. 523; 531; 521; 544; ) COULD HAVE BEEN, BUT WERE NOT PROSECUTED.

PETITIONER POINTS OUT THE NEED TO PROTECT THE VITAL INTERESTS OF HIS ACTUAL INNOCENCE THAT IS AT STAKE. DURING TRIAL THE PROSECUTOR IMPROPERLY INQUIRED INTO THE DETAILS OF PETITIONER'S PRIOR CONVICTION. (PET. APP. TR. P. 42; 43; 82; 83) INQUIRY WAS SUPPOSED TO BE LIMITED, AND THE PROSECUTOR WAS NOT TO GO INTO DETAILS, AND THIS WAS ERROR, PURELY BEING THAT THE PROSECUTION'S INQUIRY WAS NOT INVITED. IMPROPER REMARKS WHICH WERE FLAGRANT CAN ONLY BE FIXED BY WAY OF A NEW TRIAL.

PETITIONER ASSERTS THAT THE PROSECUTOR, THE ALLEGED VICTIM, AND INVESTIGATOR ON SEVERAL OCCASIONS INFRINGES TO THE DETAILS OF THE PRIOR ON MANY OCCASIONS. (PET. APP. TR. P. 161; 164; 215; 217) THE CONVICTION OF THE PRIOR WAS NOT CHALLENGED, BUT WAS USED TO ENHANCEMENT OF § 16-3-65(A)(2)(D)(2), AND THE INTERPRETATION CAUSED PREJUDICIAL HARM UPON PETITIONER. SEE STATE V. TAYLOR, 436 S.C. 28, 34, 870 S.E.2D 168, 171 (2002) REHQ DENIED (APR. 15, 2003) ("A QUESTION OF STATUTORY INTERPRETATION IS A QUESTION OF LAW, WHICH IS SUBJECT TO DE NOVO REVIEW...").

A.)

IT WAS DEEPLY INEQUITABLE AND TO HAVE  
CONSIDER THE CLAIM OF ACTUAL INNOCENCE  
NOR ENTERTAINING THE IDEOLGY AND AFTER  
DISCOVERED EVIDENCE, IN THAT BRADY VI-  
LATIONS HAD.

PETITIONER FROM THE ONSET OF THE CRIMES CHARGED, ATTEMPTED TO DEMONSTRATE THAT THE ALLEGATIONS WERE FALSE, AND THIS CONVICTION, WITH ITS RESULTING, DRASTIC LOSS OF LIBERTY IS UNLAWFUL RECORD DOES ESTABLISH THAT UNDER TOTALITY OF ALL CIRCUMSTANCES, DUE PROCESS VIOLATIONS, DID OCCUR, IN THE FACT COUNSEL DID NOT PUT UP ANY DEFENSE TO INCLUDE THE TRIAL, DIRECT APPEAL AND THE POST-CONVICTIONS PROCESS. AT THE EXTRAORDINARY HEARINGS, THE PETITIONER TESTIFIED TO HIS COMPLETE AND ACTUAL INNOCENCE. (PET. APP. 415)

THE LOWER COURT DENIED RELIEF IRRESPECTIVE OF ACTUAL FACTS OF THE PETITIONER'S TESTIMONY, BUT THE COURT BASICALLY CALLED THE PETITIONER A LIAR. (PARAPHRASING) (PET. APP. ORDER, P. 18 OF 22). IN PRECISELY THESE TYPE OF CASES, AS (WINGATES), IN WHICH NO APPOINTED COUNSELS HAD NO REALISTIC POSSIBILITY OF ANY SUCCESSFUL TRIAL, NOR BITE OF THE APPLE, WHEN COUNSEL RECEIVED BY THE PETITIONER, HIS DESIRE TO PURSUE HIS INNOCENCE IN ALL ACTUALITY. THE ABSENCE OF OTHER ALLEGED PERSONS, OF THE SAME, WAS CRUCIAL AND NEEDED, EXCULPATORY, BY ULTIMATELY CONVINCING AND PETITIONER'S CONVICTION SHOULD BE REVERSED.

2/35 (TW)

DUE PROCESS WAS PLAINLY VIOLATED WHEN PROSECUTION WITHHELD POTENTIAL EXCULPATORY EVIDENCE. SEE (TOLIVER V. MCCAUGHTERY, 539 F.3d 766, 780-81 (7th Cir. 2008)). THE STATE (PROSECUTORS) HAVE A DUTY TO SEEK JUSTICE, AND THE JUDICIARY'S DUTY TO ENSURE THE FAIRNESS OF TRIALS. PETITIONER CLEARLY MAKE NOTICE THAT THE CRIMES CHARGED ARE MOST SERIOUS, AND ARE OFFENSIVE IN NATURE TYPE OF ALLEGATIONS. HOWEVER, THE STATE NEED TO BACK UP THESE MOST SERIOUS OFFENSIVE ALLEGATIONS WITH ACTUAL FACTS. ALTHOUGH SOME OF THE ALLEGED PERSONS, COULD BEEN BOUGHT AND INVESTIGATED BEFORE TRIAL, THE PETITIONER DID DISCOVERED SOME AFTER TRIAL, DURING THE DIRECT APPEAL AND PCR PROCESSES, AND GENERALS ISSUES OF THIS MATERIAL FACTS DOES EXIST TO EVEN QUESTION WHETHER BRADY VIOLATIONS WAS NOT HAD?

B.) FAILURE TO ENSURE THE ACTUAL KNOWLEDGE VOLUNTARINESS, AND INTELLIGENT DECISION TO TESTIFY, PLAIN ERROR SHOWN, WHEN THE ONLY ISSUE IS CREDIBILITY.

IN SUCH CASES, AS IN ANDER'S PROCEDURES, ALL APPEARANCES, SHOW THAT ALL CONCERNED BELIEVED JUSTICE TO HAVE BEEN FULLY SERVED. UNFORTUNATELY THIS IS NOT JUSTIFIABLY THE TRUTH, ONLY FOR THE VERY MOST COMPELLING, OF REASONS: PETITIONER IS INNOCENT.

IT CAN HARDLY BE SAID THAT PETITIONER, HAD KNOWLEDGE OF HIS RIGHT TO TESTIFY AS AN ACCUSED OF A SEXUAL OFFENSE. THE RELEVANCE OF PETITIONER'S KNOWLEDGE IS IMPORTANT IN THAT THE STATUTE OF S.C. CODE ANN. § 16-3-1055, SHOULD BE MADE TO SHOW CLARIFICATION THAT THE DEFENDANT HAVE KNOWLEDGE TO TESTIFY OR NOT, WHEN CREDIBILITY IS THE ISSUE. EVEN THOUGH, DECISION TO EXERCISE OR FOREGO THE GUARANTEED RIGHT TO TESTIFY OR NOT, IS FOR THE PETITIONER ALONE, THE KNOWLEDGE OF UNDERSTANDING OF SUCH IS VERY PERTINENT. MOREOVER IF PETITIONER HAD KNOWLEDGE OF CREDIBILITY AS AN ISSUE, THEN HE WOULD'VE DEFINITELY TESTIFY ON HIS BEHALF. THE KNOWLEDGE OF HIM TESTIFYING, WOULD HAVE MOST HIGHLY CHANGE THE MANNER AND OUTCOME HAD.

THE COURT SHOULD BE REQUIRED IN A TYPED VOLUNTARINESS INQUIRY, ON PETITIONER'S PART, HAD ANY TIME BEFORE HIS LAWYER REST THE CASE. UNDER FURTHER DUTY TO PETITIONER, UPON AN ASSUMPTION OF AWARENESS, OF THE EXISTENCE OF CREDIBILITY, SHOULD BE PROVIDED THE FULL INFORMATION ON WHICH TO MAKE AN INFORMED CHOICE WITH KNOWLEDGE OF THE COURT'S CHARGE ON THE LAW, IN REGARDS TO § 16-3-1055(A)(2); BE CLEAR IF THE PETITIONER WAS VOLUNTARILY WAIVING HIS RIGHT TO TESTIFY WITH THE KNOWLEDGE OF HIS CREDIBILITY, WOULD BE AN ISSUE ALSO. NOT BEING PROPERLY AWARE, ALSO QUESTIONS ITS VOLUNTARINESS.

PETITIONER DOES SHOW HOW THE TRIAL COURT, LENDING A HAND, MANY TIMES ON BEHALF OF THE STATE DURING TRIAL. FOR ONE, THE TRIAL JUDGE GAVE A STIPULATION OF THE SEX OFFENDER REGISTRY, ON HIS OWN RECEIVANCE (PET. APP. TR. P. 49). SECONDLY, THIS STIPULATION AMOUNTED TO PETITIONER PLEADING GUILTY ON (THAT) FIXED ELEMENT, WITH NEITHER ATTORNEYS, BRINGING THIS ISSUE AT PLAY IN THE TRIAL. THIRDLY, THE JURY INSTRUCTION, (IMPROPER AND DEEMED UNCONSTITUTIONAL), TO THE "VICTIMS TESTIMONY NEED NOT BE CORROBORATED," WHICH WAS ONLY SAID ONCE IN STATE V. STUKES, WAS STATED A TOTAL OF FIVE (5) TIMES IN PETITIONER'S CASE IN THE HEARING OF THE JURY. (PET. APP. TR. P. 165; 213; 217; 218-224; 231-232).

WHETHER SUBSTANTIAL DOUBT OF GUILT IS CONCEIVED, WHEN ALLEGED VICTIM IS MADE EVEN LESS CREDIBLE BY THE FACT THAT IN MANY OTHER RESPECTS, THE TESTIMONY SHOULD BE FOUND TO BE FABRICATED, BY OTHER FALSE ACCUSATIONS?

THE INTERESTS OF JUSTICE WOULD BE FULL SERVED BY NOT ENTERTAINING THE FACT OF THE MATTER, WHETHER THE WAIVER TO TESTIFY IN AN SEXUAL ABUSE CASE, INTELLIGENTLY MADE, ALTHOUGH THE MAJOR PURPOSE IS TO FIND THE TRUTH? FURTHERMORE, STRUCTURAL ERRORS WAS MADE AND THE DECISION TO TESTIFY, WAS NOT KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY DECIDED BY PETITIONER.

24/35 (12)

## ARGUMENT IV.

THE LOWER COURT ERRED ANEW, WHEN NO REVIEW OF PREJUDICE WAS DETERMINED IN PROCEEDINGS WITH RESPECT TO THE SUBSTANTIVE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, WHEN NO ERROR WAS FOUND BY THE DISMISSAL OF DIRECT APPEAL.

PETITIONER HERE NOW STATES THAT HIS POST-CONVICTION RELIEF COUNSEL (ON RECORD), FAILED TO HAVE PURSUE OBVIOUS AVENUES OF INVESTIGATION, THIS SHOWS PER COUNSEL PERFORMED IN A DEFICIENT AND LACKING MANNER WHEN THE TRIAL COUNSEL'S CLAIM OF INEFFECTIVE ASSISTANCE, AND APPELLATE COUNSEL'S CLAIM OF INEFFECTIVE ASSISTANCE ARE SUBSTANTIAL. ALSO, THE FACT OF PETITIONER CHALLENGING THE CONSTITUTIONALITY OF HIS CONVICTION.

TRIAL COUNSEL'S FAILURE TO ENGAGE IN THE ADVERSARIAL PROCESS, BY NOT INVESTIGATING, OR UNDERSTANDING THE LAW. THERE WAS NO PHYSICAL EVIDENCE OF THE ALLEGED ABUSE, THE CASE RESTED SOLELY ON CREDIBILITY DETERMINATIONS. THUS, WYNGATE'S OPPORTUNITY TO ELICIT TESTIMONY FROM THE OTHER ACCUSED PERSONS REGARDING POTENTIAL FALSE ALLEGATIONS WAS CRITICAL TO THE PETITIONER'S DEFENSE. AT TRIAL IS WHEN TRIAL COUNSEL ASKED PETITIONER FOR WITNESSES. (PET. APP. TR. P. 09).

WAS THE PETITIONER TRIED ON THE MERITS OF THE CRIME AS CHARGED, OR WAS THE CONVICTION BASED ON EVIDENCE OF OTHER CRIMES OR WRONGS SUCH AS HIS PAST? THE SC CODE OF LAWS, SECTION §16-3-655 USED AT PETITIONER'S TRIAL WAS HOSTILE AGAINST THE INDIGENCE OF AN ACTUAL INNOCENT PERSON, (AS WHAT HAPPENED TO PETITIONER), AS THE SOUTH CAROLINA LAWMAKERS, PERHAPS, BECAME VENGEFUL AND THUS SO EASILY SOUGHT TO WIN JUSTICE FOR THE ALLEGED VICTIM, BUT IN THIS INSTANCES, RESORTED TO DESPERATE MEANS TO SECURE A GUILTY VERDICT.

APPELLATE COUNSEL (ON RECORD) CLEARLY WAS NOT A COMPETENT COUNSEL FOR PETITIONER. IN THE EXERCISE OF REASONABLE AND PROFESSIONAL JUDGMENT, NO COUNSEL WHO WAS COMPETENT, WOULD HAVE OMITTED THE CLAIMS THAT PETITIONER MADE DURING DIRECT APPEAL (PET. APP. PROSE. \_\_\_\_\_). COUNSEL CHOSE TO BRIEF JUST ONE ISSUE THAT WAS A VIRTUALLY CERTAIN LOSER IN THAT HE ELECTED TO BE RELIEVED. (PET. APP. P. 246 \_\_\_\_\_). FORTUNATELY, THE PETITIONER SHOW THAT DEFICIENT PERFORMANCE WHEN A MUCH STRONGER CLAIM, BENEFIT, AND THE ENTITLEMENT OF, WAS AVAILABLE. (PET. APP. PROSE. \_\_\_\_\_).

THE LOWER COURT COMPLETELY DENIED PETITIONER'S CLAIMS, BEING DUE TO THE DISMISSAL OF THE DIRECT APPEAL, THIS WAS OBJECTIVELY IMPROPER AND UNREASONABLE. (PET. APP. P. 353 \_\_\_\_\_).

2/10/95 (TW)

A.) PETITIONER'S CASE AND ITS OUTCOME WAS DIFFERENT  
IF EVALUATING THE STRICKLAND ASSESSMENT  
AND QUALITY OF THE PLAIN-ERROR TEST AND  
THE PREJUDICE PRONG.

PETITIONER SUBMITS THAT IF THE LOWER COURT HAD REASONABLY EVALUATE PETITIONER'S CLAIMS, RELIEF WOULD HAVE ALREADY BEEN RECEIVED. THE COURT ERR BY FAILING TO CONDUCT A CUMULATIVE ANALYSIS WHEN THE PCR APPLICATION & MEMO. IN SUPPORT STATES MULTIPLE CLAIMS, AND THE RECORD DID CONTAIN SEVERAL GROUNDS FOR THE JUDGE TO CUMULATIVELY ASSESS. REBUTTING THE STRONG PRESUMPTION OF THE RELIABILITY FOR EFFECTIVE ASSISTANCE, THE COURT SHOULD HAVE, IN ALL FAIRNESS, PURSUE CUMULATIVE ANALYSIS FOR STRICKLAND CLAIMS.

THE PCR JUDGE, IN THE ORDER OF DISMISSAL FAILED TO CORRECTLY STATE AND ADDRESS THE CLAIMS AND REASONS OF THE PETITIONER'S ISSUES RAISED, WHEN HE COMMENCED THE PCR ACTION. THE ISSUES RAISED IN THE ORDER (PET. APP. P. 358) CONTAINS ONLY FOUR (4) ISSUES. HOWEVER, PETITIONER RAISED FIVE (5) ISSUES ON HIS PCR APPLICATION (PET. APP. 364-386). THE STATE AND ITS RETURN, FAILED TO STATE THE ALLEGATIONS OF THE PETITIONER, BEING HELD IN CUSTODY UNLAWFULLY, (PET. APP. P. 40-42). THE ORDER OF DISMISSAL AND THE RETURN IS IDENTICAL.

MEANING (THEY) WERE COPIED AND PASTE, BOTH HAD SAME (4) ALLEGATIONS, THE NUMBERING, THE MISPELLED WORD (STOKES NOT STUKES) IS CLEARLY SHOWN. THIS PRESUMPTION FURTHER ALLOW THE PETITIONER TO KNOW THAT [THE STATE] TYPED THE ORDER OF DISMISSAL, AND SENT TO THE JUDGE TO SIGN AND TO BE PAID. (PET. APP. P. 397).

THE PCR COURT ABUSED HIS DISCRETION WHEN AFTER TESTIMONY DID NOT ALLOW ANY CLOSING ARGUMENTS TO THE PETITIONER, WHO HAVE PREPONDERANCE OF THE EVIDENCE, DID NOT ESTABLISH BELIEF AFTER TESTIMONY, THEN CERTAINLY CLOSING BY THE PETITIONER SHOULD HAVE BEEN HAD (PET. APP. P. 496).

PETITIONER SUBMITS TO THE COURT, THAT HE WALKED IN THE EVIDENTIARY HEARING WITH A LEGAL BOX FILLED WITH EVIDENCE TO REBUT (BOTH) COUNSEL'S EFFECTIVENESS, BUT ALL PETITIONER DID WAS ANSWERED THE QUESTIONS THAT WERE ASKED CREDIBLY. THE APPELLATE COUNSEL WAS AT THE HEARING ON THE SPEAKER PHONE (PET. APP. 458-59). THE TRIAL COUNSEL WAS SAID TO BE CREDIBLE, WHEN THE TRIAL COURT NEVER ALLOWED HIM TO BE SWORN UNDER OATH. THE PETITIONER DID NOT WAIVE THE TRUTH OF THE ACCURACY OF TRIAL COUNSEL'S TESTIMONY (PET. APP. 476-77).

B) THE OPPORTUNITY FOR THIS COURT TO ADDRESS AND REVIEW THE ISSUE OF PREJUDICE EQUALLY EFFICIENT TO THE STRICKLAND STANDARD

IN DECIDING THE ISSUE OF PREJUDICE, IN POST-CONVICTION ACTIONS, THE SUPREME COURT NOTED THAT BEFORE A CONSTITUTIONAL DEPRIVATION WILL BE DECLARED HARMLESS, THE COURT MUST FIND IT HARMLESS BEYOND A REASONABLE DOUBT, THAT IS, THAT THE ERROR DID NOT CONTRIBUTE TO THE VERDICT. SEE PETER V. STATE, 309 S.C. 408, 421 S.E.2d 422 (1992).

PETITIONER ASK THIS COURT TO (PLEASE) ACKNOWLEDGE THE FOLLOWING:

1) PCR JUDGE, IN HIS ORDER, DID COPY & PASTE THE ISSUES OF THE STATES RETURN (4 ISSUES), THE ISSUES OF THE PCR APPLICATION w/ MEMO, WAS (5 ISSUES). < DID NOT RULE ON ALL ISSUES >.

2) PCR COUNSEL FAILED TO AMEND APPLICATION SO THAT EVERY POTENTIALLY MERITORIOUS CLAIMS SHALL BE RAISED AND PROPERLY PRESENTED. < THE ORDER DIDN'T RELIEVE COUNSEL OF RESPONSIBILITY >. UNEXPLAINED FAILURE TO AMEND APPLICATION, OR FILE 59(e) MOTION WHEN NOT RULED ON CONSTITUTED INCOMPLETE REPRESENTATION.

3.) PER COUNSEL PROVIDED "NO EVIDENCE" TO SUPPORT PETITIONER'S CLAIMS, AS WHEN ISSUE PRESERVATION REQUIREMENTS APPLY IN CIVIL CASES AND TO ERROR PRESERVATION APPLICABLE RULES. < BEARING BURDEN OF PRETEXT ISSUES: OTHER ALLEGED ACCUSED >.

4.) TRIAL COUNSEL WAS NEVER SWORN IN; IN THE DISMISSAL, THE COURT (LOWER) FOUND CREDIBLE, EIGHT (8) TIMES OF HIS TESTIMONY, AND THAT PETITIONER BEING "WHOLLY NOT CREDIBLE." < CONTROL BY AN ERROR OF LAW >.

5.) PETITIONER DID NOT RECEIVE THE RIGHT TO A CLOSING ARGUMENT AT THE HEARING, TO FULLY COMPLETE BURDEN IF NOT FINISHED. < IF, WASN'T, ALREADY MET, SHOULD HAVE CONTINUED >.

6.) PER JUDGE (COURT) DID NOT MAKE SPECIFIC FINDINGS OF FACT AND EXPRESSLY STATE CONCLUSION OF LAW RELATING TO EACH ISSUE PRESENTED. < WHETHER APPLICATION ISSUES, NOW ISSUES PRESENTED AT HEARING >  
< (S)C(2) MOTION TO ALTER OR AMEND WAS CRUCIAL >.

IN TEAGUE V. LANE, THE COURT FASHIONED A SOLUTION OF SORTS TO THIS PROBLEM, HABERS PETITIONERS WHO CONVICTIONS HAD BECOME FINAL (ALREADY), COULD NOT BENEFIT FROM "NEW" RULES OF CRIMINAL PROCEDURE. IN OTHER WORDS, IN SEEKING RELIEF, PETITIONER IS LIMITED TO THE UNCHANGED CONSTITUTIONAL LAW EXISTING AT THE TIME HIS DIRECT APPEAL ENDED.

DECLARATORY THEORY HAD CONCLUDED THAT A LAW THAT WAS DECLARED UNCONSTITUTIONAL SHOULD NEVER HAVE BEEN THE LAW. THEREFORE, OVERRULING CASE WAS ALWAYS AND HAD ALWAYS BEEN THE LAW.

IN JONES V. CALLOWAY, 842 F.3d 454, 464 (7th Cir. 2016), ON THE OTHER HAND, "IT IS A GENERAL MATTER, A DEFENSE ATTORNEY'S FAILURE TO PRESENT A MATERIAL EXCULPATORY WITNESS OF WHICH, HE WAS AWARE, QUALIFIES AS DEFICIENT PERFORMANCE." ATHIAS V. ZENK, 662 F.3d 939, 945 (7th Cir. 2012), IT IS COUNSEL'S PERFORMANCE, "VIEWED AS A WHOLE," THAT MATTERS. SEE ALSO COMMONWEALTH V. ZABOROSKI, (1980) 283 Pa. Super 132, 423 A.2d 1023. REMANDING ON THE GROUND THAT APPARENT POST-CONVICTION COUNSEL'S FAILURE TO ATTEMPT TO FILE AN AMENDED PER APPLICATION AND TO SUBMIT A BRIEF SETTING FORTH THE LEGAL PRINCIPLES ON WHICH THE PETITIONER RELIED, RENDERED THE POST-CONVICTION PROCEDURES "IN EFFECT UNCOUNSELED."

IN A PER COURT'S ANALYSIS OF PREJUDICE, THE STRENGTH OF THE STATE'S CASE "IS ONE SIGNIFICANT FACTOR THE [PER] COURT MUST CONSIDER ALONG WITH THE SPECIFIC IMPACT OF COUNSEL'S ERROR AND OTHER RELEVANT CONSIDERATIONS. IN DETERMINING WHETHER [THE PETITIONER] HAS MET HIS BURDEN OF PROVING PREJUDICE." SEE SMALLS V. STATE, 429 S.C. 174, 189, 190, 810 S.E.2d 83, 844, 845 (2018).

## AFFIDAVIT IN SUPPORT

PETITIONER ASSECTS THAT THIS MAY BE THE WORST CASE OF THIS TERM, IN THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA, DUE TO THE FACT FAILURES WERE SHOWN AND THE FAILURES SHOWN WERE SO PREJUDICIAL UNTO HIM. VIOLATIONS HAD OCCURRED AND THE TRUTH OF THE ALLEGATIONS HAD THEREIN. THIS PETITION FOR WRIT OF HABEAS CORPUS IS AN EXTRAORDINARY POST RAE CIRCUMSTANCE.

PETITIONER ALSO ASSECTS, THAT THIS HONORABLE COURT HAVE THE POWER TO THE RULES AND REGULATIONS THAT ARE BEING CHALLENGED, AND MAY HAVE GREAT SECOND THOUGHTS OF THE CONSTITUTIONALITY OF HIS CONVICTIONS. PERHAPS, A MISTAKE, OR MAYBE AN OVER-LOOKED IMPROPER HODDOR, AND UNAD THE PREJUDICES ARE CORRECTED, THE CLAIMS ARE SHOWN TO BE AN EGREGIOUS ASSAULT ON OUR DEMOCRACY IN ITSELF.

PETITIONER HONESTLY STATES THAT HE HASN'T COMPLETELY LOST FAITH OF THE JUDICIAL PROCESSES IN ITS TOTALITY. MOREOVER, IN IMMEDIATE SENSE, THE LOSS OF PRIVACY LIFE, LIBERTY, PURSUIT OF HAPPINESS, SECURITY, AND TO INCLUDE PEACE, ARE CONTINUOUSLY BEING HIJACKED, BEING THAT TAMARQUES ANTUWAIN WHEGARE BORN IN THE UNITED STATES IN THE STATE OF SOUTH CAROLINA ON SUMMER MARCH 04, 1984, IS STILL BEING HELD IN CUSTODY UNLAWFULLY.

# WHY SHOULD THIS PETITION BE GRANTED CERTIORARI

PETITIONER'S COMPLAINTS BASED ON A STATUTE, S.C. CODE ANN. § 16-03-652 THAT PROVIDES "VICTIMS TESTIMONY NEED NOT TO CONCORATED" THAT WERE USED, DURING TRIAL, WAS DEEMED UNCONSTITUTIONAL.

THIS STATUTE, 16-03-655, USED AT TRIAL, DO NOW VIOLATE THE RIGHT TO AN IMPARTIAL AND FAIRNESS OF TRIAL. THE DUE PROCESS CLAUSE OF THE (5TH, 14TH) AMENDMENTS OF THE UNITED STATES CONSTITUTION, THE ERROR WAS DETRIMENTAL TO THE VERDICT. IN THE ARTICLE ~~IV~~(5) SECTION 17, STATING: IMPERMISSIBLE COMMENT ON THE TESTIMONY GIVEN IN THE CASE. OF THE SOUTH CAROLINA CONSTITUTION, IN THAT THE STATUTE AS IN STATE V. STUBBS, WAS ERROR OF LAW.

PETITIONER, HAD TO ENDURE HEAVY AND VERY HARSHIPS AND DELAYS, WHEN THE LOWER COURT HAVEN'T ALREADY ACT.

THE ERRORS OF LAW AND ITS RULINGS ON EVIDENCE, AND THE LIKES ARE IMPORTANT FACTS ON WHY THIS PETITION SHOULD RECEIVE RELIEF.

# CONCLUSION

The United States Constitution, Ratified AND WENT INTO EFFECT ON MARCH 04, 1789. FIRST ARTICLE I, CONGRESS. THE ANNIVERSARY OF ITS RATIFICATION IS THE VERY SAME DAY OF PETITIONER'S BIRTH, ONLY 195 YEARS AGO.

WHETHER CLEAR CONFIRMATION OF ACTUALITY, DOES MOVE THIS COURT TO ASK THEMSELVES, WHETHER THE COURT CAN BE CERTAIN, BEYOND A REASONABLE DOUBT, THAT PETITIONER'S CONVICTION, SENTENCE, CONFINEMENT, CUSTODY, AND HIS RESTRAINTS ARE CONSTITUTIONALLY LAWFUL?

CONSIDER JUSTICE ON BEHALF OF AN INNOCENT MAN, SO THAT TRUST CAN BE ESTABLISHED, AND ALL PRISONERS CAN BE FULLY PROUD OF THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF SOUTH CAROLINA & ITS LAWS.

PETITIONER HEREBY ASK THAT A NEW TRIAL BE HAD (ABSOLUTE) AND ON THE ISSUE OF DAMAGES, TO BOND PETITIONER'S APPELLATE REVIEW AND INSTANT RELEASE OF PETITIONER AND/OR REMANDS.

I, TAMARA ADE ANTHONY WAGGATE, PRAY IN THE NAME OF JESUS CHRIST, THAT THIS HONORABLE COURT DO ACT ACCORDINGLY. Innocently and the  
PETITIONER

34/35 @ D. Anthony Waggate

# MOTION TO BE SUBMITTED

I. MOTION FOR BOND PENDING APPELLATE REVIEW IN ACCORDANCE WITH S.C. CODE ANN. ~~§17-27-100~~; RULE 243(K), SCACR, THERE ARE SPECIFIC FACTS SHOWING THAT THERE IS A GENUINE ISSUE FOR TRIAL.

II. MOTION TO SET ASIDE JUDGMENT, BY A MOTION FOR LEAVE IN ACCORDANCE WITH RULE 100(b)(6) SCRPC. AFFECTED IF OBTAINED BY FRAUD, COLLUSION.

III. MOTION FOR NEW TRIAL (FOR ISSUE OF DAMAGES), AND/OR NEW TRIAL ABSOLUTE THE VIOLATING OF STATUTE & OTHER CONSIDERATIONS

AND/OR AS THE COURT SEE TO ADMINISTER COURTESY PROPER, AND DESERVING RELIEF THAT'S AUTHORIZED BY RULE 220 SCRAC.

THE PETITIONER THIS DAY OF 8<sup>th</sup> THE MONTH OF March, YEAR OF OUR LORD 2023

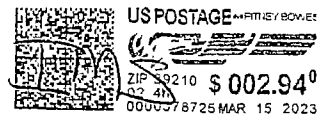
2 COR. 3:17

WHERE THE SPIRIT OF THE LORD IS, THERE IS LIBERTY

SUBMIT'S 3/8/23 9. [Signature]

35/35 (TW)

TAMAROUS A. WILGATE  
PRO SE REPRESENTATIVE



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South Carolina Supreme Court  
c/o Hon. Patricia A. Howard (Clerk)  
Post Office Box 11330  
Columbia, South Carolina  
29211

