

THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY **SC Court of Appeals**
Court of General Sessions

Honorable Judge Benjamin H. Culbertson, Circuit Judgment

Case No. 22-000671

State

Respondent,

v.

Terron Dizzley,
Gwendolyn B. Frasier,
LaQuesha Felder,

Appellants,

MOTION TO CORRECT THE FALSE PROCEDURAL HISTORY

AND LAW OF CASE AND REQUEST FOR A HEARING

Appellant moves before this Honorable Court pursuant to SCACR, Rule 240 with a
"Motion to Correct the False Procedural History and Law of Case."

STATEMENT OF CASE

As a result of nine years of being falsely imprisoned and intentionally being deprived of access to court resulted in the judicial system intentionally fabricating false procedural history and law of Appellant's case, despite countless motions to correct the record, Appellant has never had a fair opportunity to correct the record. Appellant respectfully pleads with this to

corrects the record from this day forward with the following true procedural history as to the law of his case.

Appellant was tried in Georgetown, S.C. in August 2012, for the charge of murder. The Honorable Judge Baxley abruptly stopped deliberations after only three to four hours and stated that the prosecution "that they are unable to meet their "burden of proof" to the extent that they can bring back a unanimous verdict," and discharged the jury, improvidently declaring a mistrial after giving a ruling that according to clearly established federal law as determined by the United States Supreme Court was an "acquittal".

Two years later in 2014, Appellant was tried again for the same offense in violation of the Fifth Amendment's Double Jeopardy Clause and Appellant was unlawfully convicted pursuant to the second trial of March 31, 2014.

Appellant's trial counsel timely filed a Notice of Appeal, and he was appointed Susan B. Hackett on direct appeal. On April 16, 2015, Appellant hired Attorney Jeremy A. Thompson to investigate "juror misconduct" and file a motion for new trial. Attorney Thompson then misled Appellant by stating that he had to substitute himself as Appellant's Appellate Counsel to do the investigation and file the motion for a new trial. Attorney Thompson then told Appellant, in his exact words, that: "a direct appeal is waste of time," and erroneously advised Appellant to withdraw his direct appeal and allow him to represent him in a Post-Conviction Relief. At this time, Appellant had just come into prison and didn't even know what a direct appeal was and took the advice of Attorney Thompson. Attorney Thompson then withdrew Appellant's direct appeal without obtaining any transcripts, without fully investigating Appellants case or advising him of the merits of his appeal, or dangers of withdrawing his direct appeal as of right, and without filing an Anders Brief. Attorney Thompson filed the request to withdraw Appellant's

direct appeal as of right on July 9, 2015, and the South Carolina Court of Appeals granted the request to withdraw direct appeal on July 16, 2015, without an Anders Brief or an independent judicial determination of appeal merit. Attorney Thompson then filed a PCR, in which Petitioner paid Attorney Thompson a total of \$15,000. Attorney Thompson then abandoned Appellant's PCR. Appellant has been diligently fighting for seven (9) years to have his direct appeal reinstated as of right.

In 2017, Appellant filed a Petition of *Habeas Corpus*, 28 U.S.C §2254 only raising the issue to reinstate direct appeal. See: Dizzley v Cartledge, 2017 WL 92886979.

On February 27, 2017, the U.S. District Court issued a Report and Recommendation to dismiss for failure to exhaust state remedies.

On April 3, 2017, Appellant filed objections to Report and Recommendation supporting the objections with evidence and cases which shows that the Magistrate's Report and Recommendation Order was contrary to clear established federal law as determined by the U.S Supreme Court. To no avail.

James K. Falk

After Jeremy A. Thompson was relieved as counsel, Appellant was appointed James K. Falk. Appellant then sent Attorney Falk evidence in which he discovered after incarcerated which was exculpatory, impeaching, and proved Prosecutorial Misconduct by knowingly presenting false testimony to obtain a conviction. Appellant requested that Attorney Falk file a Motion for New Trial, After-Discovered Evidence pursuant to SCRCrim. P. 29(b) and also a Motion for A New Trial Brady violation. Appellant also explain to Attorney Falk that he never had a complete Rule 5 Discovery, case file, or complete copy of his first trial transcript of his 2012 trial and requested that Attorney Falk obtain these materials.

Attorney Falk responded in a letter with misleading information that “there is no such Rule 29(b)”. Appellant wrote Attorney Falk again and provided him with the Rule and he continued to mislead Appellant that such rule does not exist. Appellant then filed a Motion to Relieve Attorney Falk, and Attorney Falk also filed a Motion to Relieve himself as Counsel.

On February 10, 2017, at Appellant's first PCR, Appellant addressed these issues to the Honorable Judge Michael G. Nettles. Appellant's Motion to Relieve Counsel and to proceed *pro se* was denied. However, Judge Nettle's granted Appellant's request for funds to obtain discovery and granted a continuance. Although Attorney Falk did not have any of the Appellant's discovery, Attorney Falk, before the PCR hearing began, tried to convince Appellant to move forward with his PCR anyway. After the PCR, Attorney Falk admitted that he had mislead Appellant, that he knew about Rule 29(b), apologized, and promised to be honest moving forward. However, Attorney Falk stopped communicating with Appellant completely.

Attorney Falk did amend the following issues to Appellant's PCR:

1. Ineffective assistance of Appellate Counsel Jeremy A. Thompson, P.O. Box 12891, Columbia, SC 29211. Mr. Thompson was retained to represent Applicant on his appeal from his conviction. Mr. Thompson failed to fully investigate the case and provided ineffective assistance in advising Applicant of the merits of his appeal.

2. The State failed to provide trial counsel with copies of prior recorded statements by the State's witnesses which contradicted the witnesses' trial testimony; and such failure to disclose was in violation of the obligation under the Brady v. Maryland.

3. Trial counsel failed to fully investigate the case and failed to interview the State's Witnesses before trial.

4. Applicant is in possession of newly acquired evidence that trial counsel should have used in preparing his defense; namely transcripts of statements from Willie Stanley, Larry Cooper, Douglas Morris, Sonia Jones, and Toni Jones. The information in these statements should have been used to impeach the State's Witnesses.

On January 11, 2017, Appellant filed a Motion for a New Trial of After-Discovered Evidence in General Sessions under a SCRCrim.P. Rule 29(b). However, Clerk of Court Alma Y. White refused to file Appellant's motion although Appellant was not represented by counsel in General Sessions. Appellant also sent a copy of this motion to the Administrative Judge, Honorable Judge Benjamin Culbertson and explained to him the circumstances. Judge Culbertson also refused to assist Appellant in filing the motion(s) (also filed was a Motion for New Trial, Brady violation), although the evidence proved Appellant's innocence and Prosecutorial Misconduct, and Appellant had Constitutional right to access the courts and file motions in a court proceeding where he was not represented by counsel.

Leah B. Moody

On or about October 19, 2017, Appellant's mother sought representation from Leah B. Moody pursuant to Appellant's PCR. Leah B. Moody mislead Appellant's mother indicating that she would charge \$6,500.00 and needed the money upfront. Leah B. Moody then contacted a Judge and the Attorney General by telephone without Appellant's knowledge or informed consent in writing and had herself illegally substituted as Appellant's Counsel.

The first time the Appellant spoke to Leah B. Moody was during a telephone conference and explained to her that he did not agree or give consent to her representation and that he would like her to return the \$6,500.00 paid to her and relieve herself of the fraudulent representation. Leah B. Moody disrespectfully refused and continued to perpetrate illegally as Appellant's

lawyer. Appellant filed a motion to relieve Leah B. Moody as counsel and Georgetown Clerk of Court, Alma Y. White, refused to file Appellant's motion, therefore, denying Appellant access to the courts. See: Foster v. State, 298 S.C. 306 (1989), "Nothing in this order shall be construed to limit any litigant's right to file a *pro se* motion seeking to relieve his counsel..." Petitioner's mother called Leah B. Moody in an attempt to resolve these matters, and Leah Moody became so disrespectful that Appellant's Mother filed a complaint with the S.C. Bar Association and the Commission of Lawyers Conduct, to no avail.

Eleanor Cleary

Appellant's mother then sought representation from Attorney Eleanor Duffy Cleary. Appellant's mother explained to Eleanor Cleary what Leah B. Moody did, and previous lawyers and explained that Attorney Cleary would need to speak with Appellant first before obtaining representation and get his informed consent in writing before substitution of counsel, to avoid any further conflicts. However, Attorney Cleary also mislead Appellant's mother and swindled her out of \$10,000.

On or about August 31, 2018, Appellant received a letter from Eleanor Cleary whom he had never met or gave consent to representation stating that "I am happy to tell you that Judge Seals very hesitantly granted the motion to continue the case to November. Therefore, I am now your counsel, and the case will definitely be heard the week of November 26, 2018. He will not allow any more continuances or substitutions of counsel. I need you to sign the enclosed fee agreement and release for information and send it back to me as soon as possible. I will be in touch with you soon." Appellant contends that he never signed the fee agreement and wrote Attorney Cleary and explained to her that he did not agree to the fraudulent representation and to return his mother's funds.

Attorney Cleary came to visit Appellant at Liebra Corrections and told him that he was “stuck” with her because Judge Seals would not allow any more substitutions. Appellant explained to Attorney Cleary that this was fraud, illegal. However, Attorney Cleary refused to return the \$10,000, and continued to perpetrate illegally as Appellant's counsel. Appellant filed a motion to relieve Attorney Cleary and Georgetown County Clerk of Court, Alma Y. White, refused to file Appellant's motion, therefore, denying him access to the courts.

After obtaining this unlawful representation Attorney Cleary began to sabotage Appellant's case, withdrawing issues already amended and amending new issues without Appellant's consent, terminating subpoenas of critical witnesses (alibi witness), and withdrawing Appellant's issue of Ineffective Assistance of Appellate Counsel to reinstate his direct appeal.

Appellant addressed many of these issues at his November 28, 2018, PCR hearing. Immediately after the PCR hearing, before any briefs were filed or rulings entered, Appellant filed another motion to relieve counsel and requested for Attorney Cleary to file a Motion to Relieve herself from the fraudulent representation. Attorney Cleary filed a motion to be relieved as counsel on December 27, 2018, and another on June 25, 2019. However, Alma Y. White, Clerk of Court of Georgetown, again refused to file Appellant's motion.

Appellant then filed a writ of mandamus in Georgetown County to relieve Attorney Cleary and again Clerk of Court, Alma Y. White, refused to file Appellant's motion and writ. Appellant then filed the writ of mandamus in the S.C. Supreme Court, requesting that the Courts direct Judge Curtis to:

“protect Petitioner’s rights to be provided with an adequate and fair corrective process for hearing a determination of claims of violations of federal constitutional guarantees to challenge the unjust, unconstitutional conviction which was imposed on him. By

relieving Attorney Cleary of this fraudulent representation, allowing Applicant to proceed *Pro Se*, amend, and brief all issues after obtaining discovery and submit evidence and affidavits, etc. to support his claims”.

Appellant also explained in his writ of mandamus and motions to relieve counsel that any further attempts to force illegal representation upon him, and any rulings made pursuant to any issues amended and briefed by Attorney Cleary, would be “Fraud upon the Court.” Appellant contends that the South Carolina Supreme Court intentionally and willfully turned a blind eye to the crimes that were being committed against him and issued an order stating that they did not have jurisdiction to prevent these crimes from being committed against him. This is contrary to clearly established U.S. Supreme Court law and South Carolina’s own laws under such circumstances.

On June 25, 2019, Appellant filed a civil action against Eleanor Cleary for fraud, before any briefs were filed or any rulings were made on his PCR. The civil action was filed in the state court for fraud and legal malpractice. See C.A. No. 2019-CP-40-03442. (which is still pending). As a result of this civil action, Eleanor Cleary filed another motion to relieve herself as counsel explaining that the courts must relieve her of Appellant's counsel because he had filed a civil action against her and remaining as Appellant's lawyer would be a "conflict of interest." However, Judge Curtis forced Eleanor Cleary to illegally represent Appellant and forced her to brief Appellant's issues while a civil action was pending against her and refused to accept the fact that Eleanor Cleary was never legally Appellant's lawyer.

On November 21, 2019, Judge Curtis issued an order denying Appellant's PCR. On December 9, 2019, Eleanor Cleary filed a Rule 59(e) Motion for Reconsideration of the Denial of Post-Conviction Relief. Page 5, paragraph 7 states:

“Finally, Counsel asked this court to address the motion to be relieved in a separate order so that she would not be forced to argue it in conjunction with the strong and meritorious post-conviction relief claims that Applicant has.” However, this Court declined to do so. Counsel must, therefore, reiterate that because Applicant is currently suing counsel in Richland County Court of Common Pleas for monetary damages, for which counsel has had to retain counsel to represent her, and which is ongoing, she has a conflict of interest. This Court mistakenly asserts that only a “little more action” is required of counsel, and this is simply incorrect, as reviewing the voluminous record and lengthy motions and orders in this case is not a “little action” under any definition. It is an error to allow counsel to remain as Applicant’s counsel, against his wishes and when he retained her, under these circumstances.”

Appellant contends that through motions to relieve counsel and this Rule 59(e) Motion, Attorney Cleary admitted to her fraudulent acts and that the court was in error for forcing her to represent Appellant under such circumstances. Judge Curtis denied Attorney Cleary’s 59(e) motion and Attorney Cleary filed a Notice of Appeal. Appellant then filed a Notice of Counsel with the South Carolina Supreme Court, asking the Supreme Court to establish that Attorney Cleary was never his attorney or agent of him and that the courts must not consider Appellant’s fraudulent PCR as the law of his case. This motion was granted by Chief Justice Beatty on April 1, 2020, acknowledging these facts and relieving Attorney Cleary of her fraudulent representation. However, the damage had already been done. The Supreme Court still attempted to obtain illegal jurisdiction over Appellant’s case pursuant to a Notice of Appeal filed by Attorney Cleary, whom the courts knew and acknowledged pursuant to the order granting Appellant’s motion for Notice of Counsel, that her representation was fraudulent. However, the

South Carolina Supreme Court still attempted to force Attorney Cleary's body of work and the court's fraudulent acts pursuant to rulings based on Attorney Cleary's body of work as the law of Petitioner's case.

On April 13, 2020, Appellant filed a Motion for Relief from Judgment pursuant to SCRCP Rule 60 (b), in the Georgetown Court of Common Pleas, pursuant to Fraud Upon the Court, Motion For Immediate Release pursuant to Double Jeopardy, False Imprisonment, and After-Discovered Evidence in General Sessions. Alma White, Clerk of Court refused to file these motions although Appellant attached the order from the Supreme Court relieving Attorney Cleary of her fraudulent representation, thus denying Appellant access to the courts again.

In December of 2019, Appellant was able to acquire the missing portions of his first trial transcript of 2012 through Private Investigator, Bennie L. Webb which consisted of the Honorable Judge Baxley's ruling, which was a judgment of "acquittal".

On April 21, 2020, Appellant filed a Motion for Immediate Release supported with facts that he was acquitted of the charges for which he was incarcerated in 2012 by Honorable Judge Michael Baxley in a trial in Georgetown County General Sessions, and that his second trial, of 2014 was illegal and, therefore, barred by the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution.

On April 27, 2020, Appellant filed a Motion to Show Lack of Jurisdiction and Fraud Upon the Court in the South Carolina Supreme Court, for the purpose of showing The South Carolina Supreme Court that based on the circumstances in which the Court acknowledges that Attorney Cleary was never legally Appellant's lawyer, and that Attorney Cleary established in her 59(e) Motion that the lower court was in error for forcing to remain as Appellant's counsel under such circumstances, and, that the South Carolina Supreme Court had no jurisdiction over

his case by accepting Attorney Cleary's Notice of Appeal on behalf of Appellant's case, knowing that it came from a fraudulent, illegal representation. Therefore, giving the South Carolina Supreme Court an opportunity to protect Appellant's rights and correct these grave errors. However, on June 16, 2020, without any explanation supported by the law, the South Carolina Supreme Court denied these motions. Appellant then filed 59(e) Motion, for ruling based on findings of facts and conclusions of law, and never received a response.

DIRECT APPEAL

Appellant contends that not only is he being held unlawfully imprisoned, he has also been deprived of his life and liberty without due process. Appellant contends that the record shows that he has been deprived of his direct appeal, as of right, when the South Court of Appeals granted a request by Appellant's Appellate Counsel's to withdraw his direct appeal, as of right, without an Anders Brief, and without conducting their own judicial determination of appeal merit. According to clearly established United States Supreme Court law, the withdrawal of Appellant's direct appeal under such circumstances, without an Anders brief violated Appellant's Sixth Amendment right to counsel and Fourteenth Amendment right to due process: See: Penson v. Ohio, 488 U.S. 75 (1988); Anders v. California, 386 U.S. 738 (1967); Evitts v. Lucey, 469 U.S. 387 (1985). See: Motion to Reinstate Direct Appeal, filed June 8, 2022, and Motion to Amend Motion to Reinstate Direct Appeal, filed June 9, 2022.

POST CONVICTION RELIEF

Appellant contends that he has also been deprived of his PCR and the right to appeal his PCR. The record shows that his PCR was the result of "Fraud Upon the Court" pursuant to fraudulent, illegal representation of Attorney Eleanor Cleary and the Court's forcing Attorney

Cleary's illegal representation on Appellant after Attorney Eleanor Cleary swindled Appellant, Terron Dizzley's mother, Gwendolyn B. Frasier, out of over \$10,000 and obtained fraudulent representation of Appellant PCR without his knowledge or informed consent in writing or without filing any motions to the court for substitution of counsel, which deprived him of his Sixth and Fourteenth Amendment right to retain "counsel of choice," which left Appellant without counsel during his PCR, impeded Appellant from raising any issues in his PCR and impeded him from exhausting any state remedies.

Appellant contends that the record shows that Attorney Jeremy A. Thompson withdrew his direct appeal without filing an Anders Brief and filed a PCR charging Appellant \$15,000. Attorney Thompson then abandoned Appellant's PCR without obtaining any discovery and first trial transcripts upon request.

Appellant was then "appointed" Attorney James K. Falk, who refused to obtain discovery and first trial transcripts upon request and refused to communicate with Appellant as to the objectives of his case. Griffin v. Illinois, 351 U.S. 12 (1956), "Defendants, who had been convicted of armed robbery, and whose motion to have copy of record including transcript furnished them without cost on ground of their poverty had been denied, filed petition. The Illinois Supreme Court affirmed dismissal of this petition and defendants brought *certiorari*. The Supreme Court held that dismissal of the petition was error. Vacated and remanded." Draper v. State of Washington, 372 U.S. 487 (1963); Coppedge v. U.S., 369 U.S. 438 (1962). Cameron v. LeFevre, 887 F. Supp.425 (1995), "Prisoner filed petition for writ of habeas corpus, alleging that the state court's delays in furnishing him transcripts of his trial that he needed for perfection of his appeal violated his rights to due process. The District Court, Seybert, J., held that: (1) delay

violated prisoner's rights but (2) delay warranted only a conditional writ that prisoner be released if appeal was not heard in reasonable time.”

Appellant contends that he addressed these issues through a Motion to Relieve Attorney Falk and several Motions to Obtain Discovery to no avail. Appellant also addressed these issues at his first PCR hearing on February 10, 2017, to the Honorable Judge Michael G. Nettles. See transcripts. Judge Nettles granted Appellant a continuance to obtain discovery and denied Appellant's Motion to Relieve Attorney Falk and proceed *pro se*. However, Appellant never obtained the complete a complete case file on discovery. Therefore, the Honorable Judge Nettles violated Appellant's Six Amendment right to “self-representation,” which would have prevented Appellant from being prejudiced by future fraudulent representation and would have allowed Appellant to raise his own issues, obtain discovery through his own motions, and fully and fairly exhibit his case. See: Hilton v. State, 422 S.C. 204 (2018); Prince v. State, 301 S.C. 422 (1990); Faretta v. California, 422 U.S. 808 (1975); McKaskle v. Wiggins, 465 U.S. 168 (1984).

Fraud Upon the Court

The record proves that in October of 2017 and August of 2018, the Courts conspired. with Leah B. Moody and Eleanor Cleary in swindling Appellant's mother out of \$6,500.00 paid to Leah B. Moody and \$10,000.00 paid to Eleanor Cleary. Both attorneys obtained fraudulent representation of Appellant's PCR without his knowledge or informed consent in writing by contacting judges and the Attorney General by telephone, one of which was Judge William H. Seals and Attorney General Johnny James, and unlawfully, had themselves substituted as Appellant's Counsel. See Exhibits. Therefore, forcing fraudulent representation on Appellant, allowing and participating in Attorney Cleary's sabotaging his PCR.

Appellant contends that these judges did not have jurisdiction nor legal authority to substitute Eleanor Cleary nor Leah B. Moody as his counsel. Whereas, these substitutions were authorized by "telephone," where there was never a motion filed with the courts or petition for substitution of counsel placed before Judge Seals which would sufficiently make the substitution of counsel "a case" that would warrant Judge Seals or any judge jurisdiction to authorize the substitution of counsel. Ness v. Eckerd Corp., 350 S.C. 399 (2002), "Trial judge lacked jurisdiction to vacate order that denied corporation's motion to set aside a default judgment, where modification was not made pursuant to a motion to alter or amend court's decision, but on judges own initiative, and modification was more than 10 days after initial order." Stump v. Sparkman, 435 U.S. 349 (1978); Dennis v. Sparks, 449 U.S. 24 (1980); In re: Murchison, 349 U.S. 133 (1955); Carlisle v. U.S., 517 U.S. 416 (1996), "District court had no authority to enter post-verdict judgment of acquittal for drug conspiracy where defendants motion for judgment of acquittal was untimely."

Appellant contends that PCR Judge, Judge Curtis, did not have jurisdiction to affirm Judge Seals' illegal substitution of Eleanor Cleary and force fraudulent representation on him, and did not have jurisdiction to rule on any briefs submitted by Eleanor Cleary or Attorney General Johnny James in response to any briefs by Eleanor Cleary. As a result of Eleanor Cleary's illegal representation, Appellant was impeded from raising any issues during his PCR and also resulted in Appellant being without counsel during his PCR. Therefore, the jurisdiction of the PCR court was lost, therefore, any ruling by Judge Curtis is void pursuant to Appellant's PCR. See: Johnson v. Zerbst, 304 U.S. 458 (1938); "If the accused is not represented by counsel and has not competently and intelligently waived his constitutional right, the jurisdiction of the court is lost, the judgment of conviction pronounced by the court is void, and release from

imprisonment may be obtained by habeas corpus.” See: State v. Motts, 391 S.C. 635 (2012), “The standard for determining whether an appellant or PCR applicant is mentally competent to waive the direct appeal or PCR is set forth in Singleton v. State, 313 S.C. 75 (1993). The failure of either prong is sufficient to warrant a stay of execution and a denial of the convicted defendant's motion to waive his right to appeal or pursue a PCR.” See Singleton. “Massey v. Moore, 348 U.S. 105 (1954), “The Supreme Court held that the prisoner had not had any hearing on the issue whether he had been insane at the time of trial except a hearing before the Federal District Court at a time when that court erroneously believed the prisoner had been represented by counsel at the time of trial the prisoner had not had the hearing to which he was entitled.”

Appellant contends that the S.C. Supreme Court, who was aware of these fraudulent acts, had no jurisdiction to except a Notice of Appeal from Eleanor Cleary whom the S.C. Supreme Court knew was not legally Appellant's lawyer and to force Attorney Cleary's fraudulent representation and her fraudulent body of work on him as the law of his case, and attempt to force Appellant to appeal issues he did not raise or give consent to raise.

The S.C. State Courts participation in illegally authorizing Leah B. Moody and Eleanor D. Cleary's illegal representations, forcing their illegal representations on Appellant, refusing to relieve them of their illegal representations, and refusing to compel them to return the money, at a total of \$16,500, illegally obtained, which was meant for Appellant's “counsel of choice,” pursuant to countless motions filed. According to clearly established federal law, as determined by the U.S. Supreme Court, constitutes an unconstitutional restraint on Appellant's assets, which violates his Sixth and Fourteenth Amendment right to “counsel of choice” which forced Appellant to represent himself throughout nine years of appealing his unlawful conviction. See:

Louis v U. S., 136 S. Ct. 1083 (2016), “The Supreme Court, Justice Breyer, held that pretrial restraints on defendant’s legitimate assets needed to obtain counsel of choice violates the Sixth Amendment. The Sixth Amendment right to counsel grants a defendant “a fair opportunity to secure counsel of his own choice,” Powell v. Alabama, 287 U.S. 45, 53 (1932), that he “can afford to hire,” Caplin & Drysdal Chartered v. United States, 491 U.S. 617 (1989). “The Court has consistently referred to the right to counsel of choice as “fundamental.” “The right to select counsel of choice” is just, “the root of meaning” of the Sixth Amendment right to counsel. U.S. v. Gonzalez-Lopez, 548 U.S. 140, 147 - 148 (2006).”

In Wainwright v. Torna, 45 U.S. 586 (1982), it was suggested that in proceedings as to which there is no right to appointed counsel, the defendant may have a Constitutionally protected interest in being represented by retained counsel and the state, therefore, cannot preclude such representation absent a compelling justification.

Appellant contends that he also had a constitutional right to be "conflict free" as to choice of “retained” counsel and not have fraudulent representation forced upon him. Wood v. Georgia, 400 U.S. 261 (1981); Mickens v. Taylor, 535 U.S. 162 (2002); Cuyler v. Sullivan, 446 U.S.335 (1980); Holloway v. Arkansas, 435 U.S. 475 (1978); Bonin v. California, 494 U.S. 1039 (1990).

Appellant contends that on April 13, 2020, he filed a Rule 60(b) Motion to Set Aside Judgment of his PCR due to “Fraud Upon the Court,” and the Clerk of Court of Georgetown County refused to file his motion, thus participating in the state’s fraudulent acts. Clerk of Court Alma Y. White of Georgetown, S.C. has been depriving Appellant of accessing the courts for nine years.

Appellant contends that appealing the judgment of his PCR as to issues briefed and raised by Eleanor Cleary, as the law of his case, would have force Appellant to participate in the illegal

and fraudulent acts of Attorney Cleary and the State Courts, therefore, sabotaging his own case and placing him at default from raising his issues in federal court.

The record proves that the Honorable Judge Kristi Curtis issued an order of dismissal of Appellant's PCR, intentionally misrepresenting the truth about Attorneys Leah B. Moody and Eleanor Cleary's representation, falsely stating that Appellant hired these attorneys willfully.

However, Judge Curtis admitted in her order that the substitution of Attorney Cleary was granted by a "telephone conference" with the Honorable Judge William H. Seals and Attorney Leah B. Moody, which was without Appellant's knowledge or informed consent in writing. The Honorable Judge Curtis order also intentionally misrepresents the truth by stating that Appellant substituted all his issues raised in his PCR by and through Attorney Cleary, therefore, was unlawful, and "fraud upon the court." See: PCR Order of Dismissal page 3 paragraph 6, which states in part : "Applicant thereafter retained counsel Leah B. Moody, Esq., on or about October 19, 2017, and relieved Falk. Applicant thereafter sought to relieve counsel Moody and retain counsel Eleanor D. Cleary, Esq.; the Honorable Judge William H. Seals, Jr. granted Applicant's request after a telephone conference, reflected by order dated October 30, 2018. By and through Counsel Cleary, Applicant substituted all prior allegations with the following grounds for relief by amendment dated November 5, 2018."

In South Carolina substitution of counsel "must" be granted with strict adherence to SCRCR Rule 11 (b) in a court proceeding and all parties must be notified and present and substitution of counsel cannot be granted *nunc pro tunc* or by *ex parte* proceedings. See Ex Parte Strom, 539 S.E. 2d 699 (2000); Culbertson v. Clemens, 322 S.C. 20, 25 (1996); Smith v. Bryant 264 N.C. 208 (4th Cir. 1965).

On December 9, 2019, Eleanor Cleary admitted to her fraudulent acts of obtaining illegal representation, that the court was in error for forcing her to continue to represent Appellant, under such circumstances, and that these errors impeded Appellant from raising his "strong and

meritorious” PCR issues, when she filed a Rule 59s(e) Motion for Reconsideration of the Denial of Post-Conviction Relief. See: Page 5, paragraph 7 which states:

“Finally, Counsel asked this court to address the motion to be relieved in a separate order so that she would not be forced to argue it in conjunction with the strong and meritorious post-conviction relief claims that Applicant has.” However, this Court declined to do so. Counsel must, therefore, reiterate that because Applicant is currently suing counsel in Richland County Court of Common Pleas for monetary damages, for which counsel has had to retain counsel to represent her, and which is ongoing, she has a conflict of interest. This Court mistakenly asserts that only a “little more action” is required of counsel, and this is simply incorrect, as reviewing the voluminous record and lengthy motions and orders in this case is not a “little action” under any definition. It is an error to allow counsel to remain as Applicant’s counsel, against his wishes and when he retained her, under these circumstances.”

U. S. v. Throckmorton, 98 U.S. 61 (1878), “Where unsuccessful party has been prevented from fully exhibiting his case, by fraud or deception, as by keeping him away from court, a false promise of compromise, or keeping him in ignorance of the suit; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where attorney regularly employed corruptly sells out his client’s interest; and in similar cases where there has never been a real contest, new suit may be maintained to set aside and annul judgment or decree.”

Appellant contends that he has demonstrated corruption and fraud upon the court involving lawyers he has retained, court appointed lawyers, judges, The Attorney General, and lawyers illegally substituted as his counsel, without his consent after swindling his mother out of substantial amounts of money meant for Appellant to obtain counsel of choice. Appellant has demonstrated that these

government officials and lawyers have intentionally impeded him from exhausting any state remedies in the Appellate Court, Court of Common Pleas, and The S.C. Supreme Court. Due to these extraordinary circumstances Appellant's due process rights have been gravely violated. According to South Carolina and United Supreme Court law, the order denying Appellant's PCR, under such circumstances, was without jurisdiction and is "void." Appellant contends that, not only did the PCR court refuse to rule on the merits of Attorney Eleanor Cleary's 59(e) Motion for Reconsideration admitting that her representation was illegal and conflicting. The record shows that Appellant also filed a "Rule 60 (b) Motion to Set Aside Judgment of his PCR Due to Fraud Upon the Court," on April 13, 2020, in the Georgetown County Court of Common Pleas, and Clerk of Court, Alma Y. White, refused to file and schedule a hearing pursuant to this motion, therefore, depriving Petitioner from accessing the courts. Therefore, according to South Carolina Supreme Court law, Appellate Court Rule 203(b)(2), the South Carolina Supreme Court lacked jurisdiction over Appellant's appeal, whereas there was never a ruling on Appellant's Rule 60(b) Motion, and this motion tolled the time for filing an appeal. Also, the South Carolina Supreme Court had no jurisdiction to accept a Notice of Appeal from Attorney Eleanor Cleary who admitted that she had no legal authority to represent Petitioner in his PCR.

MOTIONS FILED AND NEVER PROCESSED BY ALMA Y. WHITE

Appellant contends that the records shows that for the entire almost nine years and counting of his unlawful incarceration, the Clerk of Court of Georgetown County, Alma Y. White, has intentionally violated Appellant's First and Fourteenth Amendment rights to access the court to "cover-up" Appellant's unlawful incarceration by refusing to file and schedule hearings

for any of the post-trial motions that Petitioner has filed for relief which proves his innocence.

See: following motions:

1. December 27, 2016 – 2020 – “Motion for New-Trial After-Discovered Evidence”; “Brady Violation”; filed in General Sessions pursuant to Rule 29(b), SCRCrim.P. A copy of this motion was also filed with the Honorable Judge Benjamin H. Culbertson, Chief Administrative Judge of Georgetown County.
2. 2017, “Motion to Relieve Counsel” of Attorney Leah B. Moody for “fraudulent, illegal representation.
3. 2018, “Motion to Relieve Counsel,”;” Writ of Mandamus to Relieve Attorney Eleanor Cleary of Fraudulent Representation.”
4. April 13, 2020, refiled “Motion for a New Trial After-Discovered Evidence”; “Motion for Immediate Relief, Double Jeopardy, False Imprisonment, Lack of Jurisdiction to Impose Sentence”; “Motion for Relief from Judgment of PCR Pursuant to Fraud Upon the Court, Rule 60 (b)”; “Motion for a New Trial Insufficient Evidence to Support Verdict.” These motions were refiled on May 18, 2020.
5. October 28, 2021, refiled “Emergency Exparte and Proposed Motions for Immediate Release, Double Jeopardy, False Imprisonment, Lack of Trial Court’s Jurisdiction to Impose Sentence.” This motion was filed by Terron Gerhard Dizzley, Gwendolyn B. Frasier and LaQuesha Felder. A copy of this motion was also filed with the Honorable Judge Steven John and Judge Benjamin H. Culbertson, Chief Administrative Judges of Georgetown County

Appellant respectfully request that this Honorable accepts this motion and the evidence filed in support of this motion and corrects the record to show that according clearly established state and federal law as determined by the United States Supreme Court, that Appellant was deprived of his direct appeal and his PCR.

For the foregoing reasons, this Honorable Court must correct the false procedural history and law of his case to reflect the truth pursuant to the motion. Appellant request

that a hearing is held pursuant to this motion so that he may present all the documents on record which proves everything stated in this motion to correct the record.

Sworn to before me

Terron Dizzley
S. *Angela B. Frazier*
Terron Dizzley, 359480
Allendale Correctional Facility
1057 Revolutionary Trail
Fairfax, South Carolina 29827

This 27th day of March, 2023.

De'Wayne Washington

Notary Republic of South Carolina

My Commission Expires: 10-14-25

DE'WAYNE WASHINGTON
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES 10-14-2025

EXHIBITS

- Exhibit 1. 59 (e) Motion for Reconsideration of the Denial of Post-Conviction filed by Eleanor Cleary. See Page 5, paragraph 7. Eleanor Cleary admits to her fraudulent acts, and Judge Curtis participation in those acts by forcing Attorney Cleary to remain as Petitioner's counsel under these fraudulent circumstances which resulted in a "conflict" of interest" and error of law.
- Exhibit 2. Letter from Eleanor Cleary dated August 31, 2018. See underlined paragraphs. Which proves that:
- A. Eleanor Cleary was substituted as Petitioner's counsel without his knowledge or consent by Judge Seals without jurisdiction and this fraudulent representation was forced upon Petitioner.
 - B. Proof that Petitioner never signed only fee agreement and release consenting to Attorney Cleary's fraudulent representation.
- Exhibit 3. Letter from Leah B . Moody which also proves that Eleanor Cleary conspired with Judge William H. Seals, and Attorney General Johnny James to unlawfully obtain representation of Petitioner's case without Petitioner's knowledge, or consent, and over the "telephone" without jurisdiction.
- Exhibit 4. Order of Dismissal of PRC by The Honorable Judge Kristi Curtis. See: Page 3., Paragraph 5, Which proves that, despite several motions filed by Petitioner to relieve Attorney Cleary from her fraudulent representation, as civil actions and also several motions filed by Attorney Cleary, herself, to be relieved as Counsel, and a Rule 59 (e) Motion, also filed by Attorney Cleary, admitting that her representation was a "conflict of Interest", and against Petitioner's wishes; that the court was in error for forcing her to continue to represent Petitioner under such circumstances, The Honorable Judge Kristi Curtis deliberately misrepresented the truth in her order of dismissal of Petitioner's PCR by stating that Petitioner willfully hired Attorney Eleanor Cleary, however, Judge Kristi Curtis' order admits that Attorney Eleanor Cleary was substituted as Petitioner's counsel pursuant to a "telephone conference" with The Honorable Judge William H. Seals, Jr. and Attorney Leah B. Moody, which is unlawful and "fraud upon the court" which proves that Petitioner had no knowledge nor gave his "informed consent in writing".
- Exhibit 4. Order by Chief Justice Beatty acknowledging Attorney Cleary's fraudulent Representation granting Petitioners "Motion for Notice of Counsel" relieve Eleanor of counsel.

Exhibit 5. Proves that The Supreme Court obtained jurisdiction illegally pursuant to Notice of Appeal filed by Eleanor Cleary whose representation to the courts admit is fraudulent. The Supreme Court is forcing Petitioner to accept this fraudulent jurisdiction and the Fraudulent body of work from Eleanor Cleary and the lower court's rulings pursuant to Eleanor Cleary's fraudulent body of work as the law of Petitioner's case.

Exhibits 6. AFFIDAVIT from Gwendolyn B. Frasier

Ex. 1



POST OFFICE BOX 40086
COLUMBIA, SOUTH CAROLINA 29240
WWW.ELEANORCLEARYLAW.COM

CLEARY LAW
UNRAVELING YOUR LEGAL ISSUES

PHONE: (803) 376-0075
FAX: (803) 753-9988
ELLEN@CLEARYLAWLLC.COM

August 31, 2018

Terron G. Dizzley #359480
Lieber Correctional Institution
136 Wilborn Ave
Ridgeville, SC 29472

Dear Terron:

I am happy to tell you that Judge Seals very hesitantly granted the motion to continue the case to November. Therefore, I am now your counsel and the case will definitely be heard the week of November 26, 2018. He will not allow any more continuances or substitutions of counsel.

I have talked to Ms. Moody and she is going to provide me with the material she has. She has also done a lot of research, which she is going to share with me. After, I process that information, I will visit you again to determine which issues to present.

I will be working on your case very hard in the next three months. However, I do want to let you know that I will be out of the country from October 7 through 15, 2018. Please keep in mind that when I work at bond court at the Richland County jail for my twelve hour shifts I don't have access to my cell phone, so I can't reply to your mother's calls or texts. I will always get back to her as soon as I can.

I need you to sign the enclosed fee agreement and release for information and send it back to me as soon as possible. I will be in touch with you soon.

Sincerely,

Eleanor Duffy Cleary
ellen@clearylawnllc.com

EDC
Encl. Motion to substitute counsel
Fee Agreement
Release for Information

Law Office of Leah B. Moody, LLC

Leah B. Moody
lbmatty@comporium.net

Post Office Box 1015
Rock Hill, South Carolina 29731

October 3, 2019

Daniel E. Shearouse, Clerk of Court
c/o Brenda F. Shealy, Chief Deputy Clerk
Post Office Box 11330
Columbia, South Carolina 29201

Re: RETURN TO MOTION TO SURRENDER ENTIRE CASE FILE
Terron Dizzely, #359480 v. Leah B. Moody
Appellate Case No. 2019-001027

Dear Mr. Shearouse:

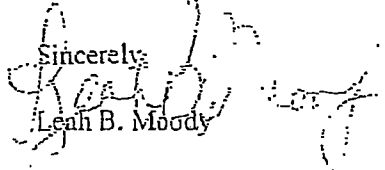
I am in receipt of your letter regarding the above-referenced matter. My law firm is closed July 31, 2019. In response to your letter, Judge William H. Seals, Jr. issued his Court Order relieving me and substituting Eleanor Duffy Cleary, Esquire, the retained attorney for Mr. Dizzely in his Post-Conviction Relief matter on August 31, 2018 in a telephone conference with Johnny James, Esquire S. C. Attorney General Office.

As a result of the Order, my firm provided the entire client file to Mrs. Cleary when she physically came to my office on September 7, 2018. She received all the documents on a disc and the original hardcopies I received from Mr. Dizzely's mother at my first meeting with her and from Mr. Dizzely sent via mail to my office.

In addition, I emailed the Attorney General Transcript of 2nd Trial (2014) to Mrs. Cleary on September 18, 2018. The file from the Attorney General's was an email version according to my system. After speaking Solicitor's Office, I obtained a copy the 1st Trial Transcript. I emailed the 1st Trial Transcript (2012) in two parts on September 28, 2018 to Mrs. Cleary.

Therefore, in response, I have provided the entire file to Mr. Dizzely by provided it to his retained attorney, Mrs. Cleary, who he directed to my office to take over his case. And to my knowledge, she has that file.

Sincerely,


Leah B. Moody

Cc: Terron Dizzely

Ex. 3

they misunderstood the entire crux of the case. Instead, as outlined in the post-trial memorandum, the trial judge dissuaded the jury from hearing a replay and the trial counsel said that was fine with him. The idea that this is acceptable in a murder trial where a person's life is on the line is absolutely alarming.

6. This Court should also review the numerous prejudicial comments made by the Solicitor, as well as the plethora of errors pointed out in the post-trial memorandum, in light of our Supreme Court's recent decision in *Fortune v. State*, Op No. 27932 (S.C. Sup. Ct. filed Dec. 4, 2019). Certain errors can infect "a trial with such a high degree of unfairness as to make his conviction a denial of due process." This is such a case. The record is replete with examples that Applicant was denied due process.

7. Finally, counsel asked this Court to address the motion to be relieved in a separate Order so that she would not be forced to argue it in conjunction with the strong and meritorious post-conviction relief claims that Applicant has. However, this Court declined to do so. Counsel must, therefore, reiterate that because Applicant is currently suing counsel in the Richland County Court of Common Pleas for monetary damages, for which counsel has had to retain counsel to represent her, and which is ongoing, she has a conflict of interest. This Court mistakenly asserts that only a "little more action" is required of counsel, and this is simply incorrect, as reviewing the voluminous record and lengthy motions and orders in this case is not a "little action" under any definition. It is error to allow counsel to remain as Applicant's counsel, against his wishes and when he retained her, under these circumstances.

CONCLUSION

Based on the foregoing, Applicant respectfully requests that his motion for reconsideration pursuant to Rule 59, SCRCP, be granted.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	IN THE FIFTEENTH JUDICIAL CIRCUIT
	)	
Terron G. Dizzley	)	2015-CP-22-0845
SCDC No. 359480,	)	
	)	
Applicant,	)	
v.	)	Applicant's Rule 59 (e) Motion for
	)	Reconsideration of the Denial of Post-
	)	Conviction Relief
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

Applicant, through undersigned counsel, submit this motion to reconsider its Order in light of the arguments set forth herein. Counsel received written notice of the entry of the Order by email from the Georgetown County Clerk of Court on December 2, 2019.

Applicant reiterates all arguments made in prior filings and hearings and asserts that a transcript of the Post-Conviction Relief hearing will reflect the facts as laid out in Applicant's Post-Trial Motion. None of the issues raised in the post-trial motion are abandoned by their exclusion from discussion in this motion.

1. In the recitation of material before the Court, the Order does not reflect that the Court considered the following items which were included in the record. At the hearing, the parties agreed, with the Court's consent, that relevant portions of the 2012 Trial Transcript would be submitted by Applicant's counsel, and those were submitted to the Court. The Court also admitted the following exhibits: (1) Applicant's Exhibit #1 - DVD containing the 911 call from Naomi Alston on November 29, 2008, which had been admitted at trial as State's Exhibit 3; (2) Applicant's Exhibit #2 - Curriculum Vitae of Lori D. Van Wallendaal, Ph.D.; (3) Applicant's Exhibit #3 - Police Report entitled "Additional Narrative"; (4) Applicant's Exhibit #4 - Google

map of distance from alibi witnesses' location at Jamison Avenue to Oatland; (5) Applicant's Exhibit #5 – Google map of distance from Applicant's residence at Middle Willow Road to Oatland; (6) Applicant's Exhibit #6 – hand drawn map of alibi's location; (7) Applicant's Exhibit #7 – transcript of police interviews used at 2014 murder trial; and (8) Applicant's Exhibit #8 – CD of police interview with Naomi Alston.

2. This Court misunderstood the testimony of Laquesha Felder. She did not testify that she and Applicant lived in Greeleyville at the time of the shooting. She testified that she and Applicant lived in Bolen Town near Norway, which the evidence showed is thirty minutes West of Orangeburg. In the portion of its Order assailing her credibility, the Court states that Felder testified to the "practical implausibility of traveling from Orangeburg to Greeleyville in thirty minutes." Order at 30. This was NOT her testimony. Perhaps the confusion comes from the fact that Felder lived in Greeleyville at the time of trial.

3. In addition, this Court failed to address the fact that trial counsel did not establish a legal alibi defense because he did not establish the distance from the places where the alibi witnesses stated they saw Applicant and the crime scene. The trial counsel expected the jury to somehow know the distance from Orangeburg to Georgetown, which is an unrealistic assumption. His failure to establish these distances, and the impossibility of Applicant being in the Georgetown, was a critical error and it was that which allowed the prosecutor to state in her closing.

Now, Mr. Barr is going to have you believe that Mr. Dizzley was in Orangeburg for the night. Most of his witnesses put Mr. Dizzley in Orangeburg till 9:30 or ten. You heard from that 911 call that the murder happened at 11:30. So I didn't spend much time with those witnesses because I don't really care where Mr. Dizzley was at nine or 9:30. It's not relevant to whether or not he committed this murder.

2014 Trial Tr. 722, line 19 -723, line 11.

In the recent case of *Martin v. State*, Op. No. 27900 (S.C. Sup. Ct. filed Jul. 17, 2019), the Supreme Court held "as a matter of law that Petitioner's trial attorneys were deficient for not eliciting the specific alibi timeline testimony from Petitioner's mother." The Court found that "[w]ithout the specific timeline testimony, Petitioner failed to establish a legal alibi." *Id.* (citing *State v. Robbins*, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980)) ("[A] purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." (citation omitted)). *Id.*

The Court found that failure to establish specific alibi testimony is grounds for post-conviction relief where there is not overwhelming evidence of guilt. Similarly, trial counsel's failure to establish specific testimony showing that Applicant could not have been at the scene of the crime was ineffective and Applicant was prejudiced by that error.

In *Martin*, *supra*, the Supreme Court emphasized that overwhelming evidence exists in those cases where there is evidence "such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of a reasonable probability the factfinder would have had a reasonable doubt' cannot possibly be met." *Id.* (internal citations omitted). Absolutely *none* of this evidence exists in Applicant's case.

4. This Court mistakenly found that Applicant had not submitted evidence at the PCR hearing that Naomi Alston had stated that the decedent had warrants against him. In its Order the Court states that this was established through hearsay testimony of Bennie Webb. This is incorrect. In an audio tape of Alston's police interview, which was introduced at the PCR hearing, Alston told police that the victim, who she called her fiancé, was not staying with her because he had outstanding warrants against him. She stated that he wanted to come home to her but Alston did not want to be involved. She told police he was planning to turn himself in in December, the month after his death. (Applicant's Exhibit #8, at 48:17 to 49:50). Therefore, this was not

speculation as to what the witness's testimony would have been. At trial, if Alston had denied the statement then trial counsel could have impeached her with her police interview. There was no need to have Alston testify at the PCR hearing because the necessary evidence was in the record. Counsel testified he reviewed all of the discovery, which included this police interview. His lack of a memory or failure to listen to all of the tapes in a murder trial does not excuse his failure to bring forth this critical evidence.

If the jury had known that the reason the victim stayed at his alternate girlfriend's house on the days leading up to his death was to avoid warrants, rather than to avoid Dizzley, their decision would likely have been different. The assistant solicitor would not have been able to make the prejudicial statement in her closing that "the day, the first time [the victim] came out of hiding at his girlfriend's house is when he was murdered." This was clearly error and Applicant was prejudiced by this error.

5. This Court in its Order failed to recognize that Applicant's defense hinged on his assertion that he was not known as "Little D" and that the victim was not referring to him when he named "Little D" as his assailant. Therefore, the testimony presented at the PCR hearing that he did not use this nickname was critical to his defense. The Court mistakenly refers to this as evidence of third-party guilt.

In addition, the Court failed to recognize that the jury misunderstood the testimony to be that the victim stated "Diz" had shot him. There was no such testimony. The only testimony was that the victim stated that "Little D" shot him. When "a jury submits a question to the court following a jury charge, it is reasonable to assume the jury is focusing "critical attention" on the specific question asked." *Martin, supra*. Any trial attorney worth his salt would ask that the testimony on which the jury is focusing critical attention be replayed when their question shows

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Eleanor Duffy Cleary
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ellen@clearylalwllc.com

Columbia, SC
December 9, 2019

The Supreme Court of South Carolina

Terron Gerhard Dizzley, Petitioner,

v.

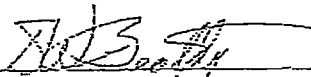
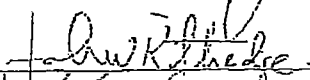
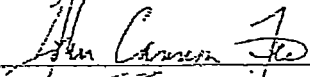
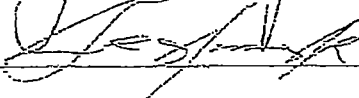
State of South Carolina, Respondent.

Appellate Case No. 2020-000253

ORDER

Counsel for Petitioner asks to be relieved as counsel of record. Petitioner has filed a *pro se* document entitled "Motion for Notice of Counsel" in which he asks the Court to establish that counsel is not his attorney or agent and argues the Court must not consider this action as "the law of his case." Counsel's request to be relieved as counsel for Petitioner in this matter is granted.

Petitioner shall, within twenty (20) days of the date of this order, notify this Court whether he intends to proceed with this matter and, if so, whether he will proceed *pro se*, retain counsel, or provide his Affidavit of Indigency to the Commission on Indigent Defense, Division of Appellate Defense (Appellate Defense) to obtain an Appellate Defender to represent him. If Petitioner chooses to proceed with retained counsel, Petitioner must, at the same time, notify this Court of the name of counsel. If Appellate Defense agrees to represent Petitioner, it shall have thirty (30) days from the date it notifies this Court of its determination as to representation to serve and file a petition for a writ of certiorari and Appendix.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina

April 1, 2020

cc:

Eleanor Duffy Cleary, Esquire

Johnny Ellis James, Jr., Esquire

Terron Dizzley, 359480

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Terron Gerhard Dizzley,
S.C.D.C. No. 359480,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)

Case No.: 2015-CP-22-00845

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief filed by Terron Gerhard Dizzley ("Applicant") on September 9, 2015, ultimately amended on or about November 5, 2018. Respondent made its return on or about December 5, 2016, thereafter amended by filing made on or about November 9, 2018. The Court convened an evidentiary hearing into the matter on Wednesday, November 27, 2018, at the Horry County Government & Justice Center in Conway, South Carolina. Applicant was present at the hearing and represented by Eleanor D. Cleary, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, undersigned, represented Respondent. At the close of the hearing both parties requested to submit post-hearing memoranda addressing each of the allegations in light of the testimony submitted, in lieu of closing arguments, and both parties submitted their memoranda.

The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcripts for both of Applicant's trials, the records of the Georgetown County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, the pleadings, and ultimately the memoranda submitted by the parties. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the July 2009 term of the Georgetown County Grand Jury for murder (2009-GS-22-00778). Charles Barr, Esq. represented Applicant, and Erin Bailey, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On March 31, 2014, Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted on April 3, 2011. Judge Couch sentenced Applicant to imprisonment for a term of 35 years.

Applicant filed a timely notice of appeal. However, by motion dated July 13, 2015, by and through Appellate Counsel Jeremy A. Thompson, Esq., Applicant moved to withdraw his appeal in order to pursue an application for post-conviction relief. By order filed July 16, 2015, the South Carolina Court of Appeals accepted Applicant's motion and dismissed the appeal. The Remittitur was issued on August 4, 2015.

Present Application

In his post-conviction relief application, by and through then-PCR counsel Thompson, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
 - a. "Defense counsel failed to conduct an adequate investigation into the Applicant's case."
 - b. "Defense counsel failed to adequately prepare for trial and failed to make appropriate objections and motions at trial."
 - c. "Defense counsel failed to interview and to call favorable witnesses at trial."

Applicant thereafter moved to relieve counsel Thompson, who was relieved by order filed September 23, 2016. Counsel James K. Falk, Esq., was appointed to represent Applicant that

same day. By and through counsel Falk, Applicant amended the following additional allegations by filing on May 4, 2017:

1. Ineffective assistance of trial counsel, in that:
 - a. "Trial counsel failed to fully investigate the case and failed to interview the State's witnesses before trial."
2. Ineffective assistance of appellate counsel, in that:
 - a. "Mr. Thompson was retained to represent Applicant on his appeal from his criminal conviction. Mr. Thompson failed to fully investigate the case and provided ineffective assistance in advising Applicant of the merits of his appeal."
3. Prosecutorial misconduct, in that:
 - a. "The State failed to provide trial counsel with copies of prior recorded statements by the State's witnesses which contradicted the witness's trial testimony, and such failure to disclose was in violation of its obligations under Brady v. Maryland."
4. After-discovered evidence, in that:
 - a. "Applicant is in possession of newly acquired evidence that trial counsel should have used in preparing his defense namely transcripts of statements from Willie Stanley, Larry Cooper, Douglas Morris, Sonia Jones, and Toni Jones. The information in these statements should have been used to impeach the State's witnesses."

Applicant thereafter retained counsel Leah B. Moody, Esq., on or about October 19, 2017, and relieved counsel Falk. Applicant thereafter sought to relieve counsel Moody and retain counsel Eleanor D. Cleary, Esq.; the Honorable William H. Seals, Jr. granted Applicant's request after a telephone conference, reflected by order dated October 30, 2018. By and through Counsel Cleary, Applicant substituted all prior allegations with the following grounds for relief by amendment dated November 5, 2018 (excerpted verbatim, save where {indicated}):

1. Ineffective assistance of trial counsel, due to:
 - a. "Failing to present evidence, including that of an expert witness, of the unreliability of earwitness identification where the only evidence that applicant was the shooter was came from witnesses who testified the deceased victim stated that 'Little D' shot him and he recognized him from his voice."

The Supreme Court of South Carolina

Terron Gerhard Dizzley, Petitioner,

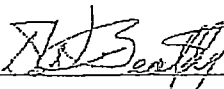
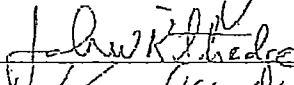
v.

State of South Carolina, Respondent.

Appellate Case No. 2020-000253

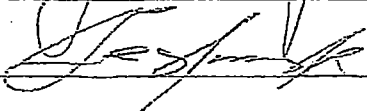
ORDER

Petitioner has filed a Motion to Show Lack of Jurisdiction and Fraud Upon the Court; a Motion for Discovery; and a Motion for Immediate Release. By order dated April 16, 2020, Petitioner's counsel was relieved and Petitioner was advised he had twenty days to inform the Court whether he wished to proceed *pro se*, which has been extended by order to May 26, 2020. *See Operation of the Appellate Courts During the Coronavirus Emergency*, 2020-03-20-01 (S.C. Sup. Ct. Order dated Mar. 20, 2020) (providing "the due dates for all Appellate Court filings due on or after the effective date of this order are hereby extended for twenty (20) days"). Petitioner has not informed the Court of his decision, but he filed the aforementioned motions *pro se*. Therefore, the Court shall treat his filings as notification that Petitioner has elected to proceed *pro se*. The motions are denied. The South Carolina Commission on Indigent Defense, Division of Appellate Defense (Appellate Defense), is associated for the limited purpose of paying for any necessary transcript(s) and providing copies of the petition, appendix, and briefs. Appellate Defense shall arrange for payment of transcripts within thirty (30) days of the date of this order.

	_____	C.J.
	_____	J.
	_____	J.

1719412



J.


J.

Columbia, South Carolina
June 16, 2020

cc: Johnny Ellis James, Jr., Esquire
Robert Dudek, Esquire
Mr. Terron Dizzley, 359480

AFFIDAVIT
OF
GWENDOLYN B. FRASIER

Gwendolyn B. Frasier, dated this 27th day of February 2023, under the penalty of perjury, affirms:

When I consulted Attorney Eleanor D. Cleary about possibly representing my son in his PCR, I explained the situation about the former attorney, Leah B. Moody, to her and why my son wanted to replace her. I gave Attorney Cleary an agreement which my son drew up as objectives for hiring representation since other attorneys had violated his rights. I also told her about the prosecutorial misconduct of the solicitor and the situation of Attorney Jeremy Thompson advising my son to give up his direct appeal and not filing an Ander's Brief as major concerns that my son wanted to be addressed by the person who would represent him. She agreed to take my son's case for \$10,500.00. I actually paid her \$10,500.00 as she charged \$500.00 to read the transcript prior to agreeing to seeking substitution for the case.

I hired her based on our conversations and pending approval of my son; she told me that if I paid her first, the Judge was more likely to substitute her the check, despite my concerns about paying before she obtained written consent from my son, she failed to share with me the laws pursuant to obtaining representation when being paid by a third party. Attorney Eleanor Duffy Cleary did not explain to me that the law required her to speak with her son, Terron Dizzley, as to the objectives of his case as to the representation he seeks and get his

informed consent, in writing, after establishing and an attorney-client relationship, before accepting money from me, or anyone else, as a third party.

Also, despite sharing these terms of agreement with Attorney Cleary, she did the same thing that Leah B. Moody did. She told me that she would have to see whether they would substitute her, and if he would, she would let me know. She, however, contacted Judge William Seals and The Attorney General Johnny James, along with Attorney Leah B. Moody, via telephone and had herself substituted as my son's counsel without getting back with me and without getting informed consent, in writing, or even speaking with my son.

When she spoke with me again, she told me that she had been substituted as my son's counsel and told me that the Judge reluctantly substituted her as my son's counsel and because my son has had so many counsels, that he would not substitute another counsel for my son – she was IT. (I was not seeking a substitution of a public defender, but a "paid" attorney.") She, then, wrote my son a congratulatory letter informing him that she was now his attorney. The letter included a form for release of Terron's legal information which she indicated that he must sign it and mail back it to her. My son, responded to Eleanor Cleary letter that he did not agree to the representation; he did not sign the fee agreement and asked her to return my money.

According to my son, when Eleanor Cleary then visited him at Liebra Corrections and she and Terron Dizzley, could not come to an agreement as to his objectives , and he again instructed Attorney Eleanor Cleary to return his \$10,000 to me, his mother. Eleanor Cleary, according to Terron, responded, "Judge Seals already substituted me as your counsel, you're "Stuck" with me.

She also share with me that the Judge would not allow anymore substitutions in his case - at this time, the PRC was already set and quickly approaching. According to my son, Attorney Cleary became very adversarial toward him and, subsequently, sabotaged his case. She refused to present his objectives despite urgings from my son, Investigator Benny L. Webb and me.

All of his Rule 5 material was never obtained by any of the attorneys that we hired. One of his alibi witnesses, Stephan Jamison, that Mr. Barr, his trial attorney, called in his first trial but failed to call in his second trial was not presented by Attorney Cleary as requested by my son, Terron Dizzley. He came to the trial, but she refused to call him to the stand. Stephan Jamison, however, since provided an affidavit to be included in my son's PCR. Other uncovered after-discovered information was not presented as requested of Attorney Cleary by Terron Dizzley.

Before Attorney Cleary was substituted, I hired another investigator, Mr. Benny L. Webb, to investigate several of my son's issues. However, after Ms. Cleary was took the case, she told Investigator Webb not to investigate the remainder of the issues that my son had listed for him to investigate, without my son's consent, nor was Mr. Webb called to testify to some very crucial issues which he had uncovered. Attorney Cleary's actions resulted in more money lost as I paid Investigator Webb \$2, 500.00 to complete an investigation which was interrupted as a result of Attorney Cleary's sabotage of my son's case.

I spent over \$65,000. in legal fees alone, not including investigative and others fees, yet my son still does not have a complete case file. Because of breach of contract and fraudulent act such as Attorney Cleary's, the rights of my son and mine have been violated. I

have witnessed and observed my son's diligence and motivation to prove his innocence in spite of all the obstacles that he has faced to be provided with fair hearings of which he has a constitutional right. I have witnessed injustices which were attempted to be covered up, (one being Attorney Jeremy Thompson's who advised to my son to withdraw his Direct Appeal and his failure to file an Anders Brief). This was evident and supported by information in the PCR transcripts and documentation.

As the person who paid the legal fees to Attorney Cleary on behalf of my son, I deeply regret that I did not take a more firm stand against Attorney Cleary and stand with for my son when he was trying to get Attorney Cleary relieved from her fraudulent representation. I was afraid that Attorney Cleary would try to sabotage my son's case if I took a hard stand initially. She ended up doing just that anyway. Not only did she fail to raise issues that my son deemed vital to the success of his case, but she also **withdrew** vital issues, **without my son's consent**, that were previously filed in the court by a former attorney of his, Attorney James Faulk.

I realize now and am appalled that Attorney Cleary's actions are crimes committed not only against my son but also against me *as I paid her. I have since learned that she had no right* to accept funds from me for the representation of my son ***without first obtaining his consent. She also had no right to refuse to return the money that I paid her when requested and force her representation on my son when she did not have his welfare at hand. Her interest/aim, again, proved to be to sabotage his case.***

As the party who paid Attorney Cleary, I am requesting that The South Carolina Supreme Court issue an Emergency Writ of Mandamus to order Attorney Eleanor D. Cleary to return the sum of

\$10,500.00 illegally obtained from me, Terron Dizzley's Mother, which was meant for him to retain "counsel of choice," therefore, violating Petitioner's Sixth, and Fourteenth Amendment rights.

I pray that the Court will grant relief to my son, Terron Gerhard Dizzley, for yet another injustice done to him in his quest to prove his innocence of these charges which have been wrongfully brought against him.

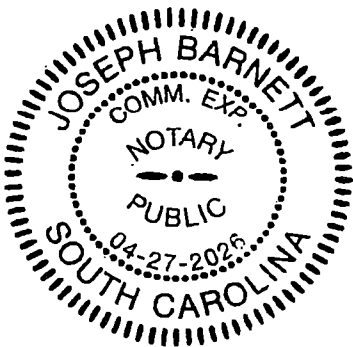
Signed Awendolyn B. Frosier this 27th day of February, 2023.

Signed _____ this _____ day of _____, _____

Joseph Barnett
Notary Public

Notary Public
Title and Rank

April 27, 2026
My Commission Expires



**EXHIBITS IN SUPPORT OF MOTION TO CORRECT FALSE PROCEDURAL HISTORY AND
LAW OF CASE**

This is a motion for the relief of judgment of PCR pursuant to Fraud Upon the Court, Rule 60(b) in support of motion filed and never processed by Clerk of Court of Georgetown County, Alma Y. White. See: Page 20, Paragraph 4.

This motion was filed on April 13, 2020, clock and stamp filed by Clerk of Court, Alma Y. White. Appellant requests to know why he has never had a hearing on this motion nor other motions listed in this Motion to Correct.

State of South Carolina
County of Georgetown
Terron Dizzley
Applicant

v

State of South Carolina
Respondent

In The Court of Common Pleas
For The Fifteenth Judicial Circuit
Case No. 2015-CP-22-00845

Memorandum In Support
of 60(b) Motion For Relief
From Judgment

Petitioner move before this Honorable Court with a
Memorandum In Support of 60(b) Motion For Relief
From Judgment.

1. Petitioner contends that his PCR is the result of "Fraud
Upon The Court." Petitioner contends that on August 31, 2018
he received a letter from Eleanor Cleary which he had
never met or spoken to stating that Judge Seals granted
her substitution of Petitioner's counsel. This substitution
was made without Petitioner's consent, or knowledge during
a telephone conference with Attorney Cleary, Judge Seals,
and Attorney General Johnny James, after Attorney Cleary
swindled Petitioner's mother out of \$10,000. Despite
several request by Petitioner explaining to Eleanor Cleary
that he did not agree or consent to the representation
and to relieve herself and return his mother's money.
Attorney Cleary refused, stating that Petitioner was stuck
with this fraudulent representation and that Judge
Seals would not grant any more substitutions.

Lack of Jurisdiction

Petitioner contends that the record clearly shows that
Judge Seals authorized this substitution whereas there

Was never any "motion" or "petition" placed before him for substitution of counsel which would make the substitution of Petitioner's counsel a "case" that would warrant Judge Seals jurisdiction to authorize substitution of counsel. See Stump v. Sparkman, 435 U.S. 349 (1978); Dennis v. Sparks, 449 U.S. 24 (1980).

Petitioner contends that his case is distinguished from Stump and Dennis. In Dennis, "the allegations were that an official act of the defendant judge was the product of a corrupt conspiracy involving bribery of the judge. Under these allegations, the private parties conspiring with the judge were acting under color of state law. (This action is pursuant to an "injunction" filed).

The District Court concluded that because the "injunction" was a judicial act within the jurisdiction of the state court the judge was immune from liability in a § 1983 suit, whether or not the injunction had issued as the result of a corrupt conspiracy."

In Stump, Mrs. McFarlin "legally" filed a "petition" to have her 15 year old daughter sterilized. Although the judge failed to comply with the elementary principles of procedural due process. The Courts held that, "the proceeding instituted by the "petition" placed before him was sufficiently a "case" under Indiana law to warrant the exercise of his jurisdiction."

As previously stated, there ^{was} never any "motion" or "petition" placed before Judge Seals for substitution of counsel. Therefore, Judge Seals lacked jurisdiction to authorize substitution of Petitioner's counsel and forced fraudulent represent-

ation on him.

Petitioner contends that the record clearly shows that the judge who authorized Leah B. Moody's substitution of James K. Falk lacked jurisdiction to grant substitution of counsel whereas, the same circumstances occurred.

Leah B. Moody contacted a judge by telephone after swindling Petitioner's mother out of \$6,500. That judge granted substitution although there was no motion or "petition" placed before this judge which would sufficiently make the substitution of James K. Falk with Leah B. Moody a "case" that would warrant that judge jurisdiction to substituted Petitioner's counsel. When Petitioner requested that Leah B. Moody return his mother's funds and relieve herself of the fraudulent representation, she refused.

Based on these facts, Petitioner contends that in South Carolina substitution of counsel "must" be granted with strict adherence to SCRCP, 11(b). Therefore, "legally" James K. Falk is still Petitioner's counsel. See Ex parte Strom, 539 S.E. 2d 699 (S.C. S.Ct. 2000), Culbertson v. Clemens, 322 S.C. 20, 25 (1996), Smith v. Bryant, 264 N.C. 208 (4th Cir. 1965).

See Ness v. Eckerd Corp., 350 S.C. 399 (2002), "Trial judge lack jurisdiction to vacate order that denied corporation's motion to set aside a default judgment, where modification was not made pursuant to a motion to alter or amend court's decision, but on judge's own initiative, and modification was more than 10 days after initial order. Issues relating to subject matter jurisdiction may be raised at any time and should be taken notice of by the

Court of Appeals on Court's own motion." Heins v. Heins, 344 S.C. 146, (ct. App 2001); Bunkum v. Manor Properties, 321 S.C. 95 (1996). Carlisle v. U.S., 517 U.S. 416 (1996), "District court had no authority to enter post verdict judgment of acquittal for drug conspiracy where defendant's motion for judgment of acquittal was untimely"; States v. Smith, 331 U.S. 469 (1947), Roell v. Withrow, 538 U.S. 580 (2003).

Petitioner contends that based on the facts and circumstances of his case, supported by clearly established State and Federal Law of the U.S. Constitution. Because Judge Seals lacked jurisdiction to authorize substitution of Petitioner's counsel, Judge Curtis lacked jurisdiction to affirm Judge Seals unlawful decision and force Attorney Cleary to remain as Plaintiff's lawyer without his consent against his and Attorney Cleary's wishes, pursuant to several motions filed by Petitioner and Attorney Cleary to be relieved explaining these conflicts of interest. Despite also a civil action filed against Attorney Cleary and a Writ of Mandamus served to Judge Curtis and Attorney General requesting that these officers of the Court cease from forcing fraudulent representation on him violating Petitioner's Constitutional rights.

Therefore, Judge Curtis, although there was a PCR filed by Petitioner and that PCR was placed before Judge Curtis. Judge Curtis did not have jurisdiction to allow Attorney Cleary to withdraw any issues or raise or amend any issues to Petitioner's PCR and did not have jurisdiction to rule on any issues amended and briefed by

Attorney Eleanor Cleary. Judge Curtis only had jurisdiction to rule on issue amended by James K. Falk and issues addressed by Petitioner at the PCR hearing.

Petitioner contends that before any of these fraudulent substitutions were granted he filed a Motion To Relieve James K. Falk and proceed pro se. This issue was addressed at Petitioner's first PCR hearing on Feb. 17, 2017 to the Honorable Judge Nettles. Petitioner was granted a continuance. These Officers of the Court violated Petitioner's Sixth Amendment right to "self-representation" pursuant forcing fraudulent representation on him. Faretta v. California, 422 U.S. 806 (1975), McKaskle v. Wiggins, 465 U.S. 168 (1984); U.S. v. Singleton, 107 F.3d 1091; Hilton v. State, 422 S.C. 204, 208 (2018), (noting the Prince and Faretta framework apply in a PCR setting where the applicant sought to waive his statutory right to counsel).

Petitioner contends that Judge Curtis's actions violated his Sixth Amendment right to "counsel of choice." U.S. v. Gonzalez-Lopez, 548 U.S. 140 (2006); Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 624-625 (1989), Flanagan v. U.S., 465 U.S. 259 (1984); United States v. Mullen, 32 F.3d 891 (4th Cir. 1994), "The court vacated defendant's conviction for conspiracy to distribute and possess with intent to distribute over 50 grams of cocaine because the district court abused its discretion in denying her motion to dismiss her counsel who was retained by her family and have a court-appointed attorney's

representation. Wainwright v. Torna, 455 U.S. 586, 102 S. ct. 1300 (1982), In Torna it was suggested that in proceedings as to which there is no right to appointed counsel, the defendant may have a constitutionally protected interest in being represented by retained counsel and the state therefore cannot preclude such representation absent a compelling justification. The right to retained counsel in those additional proceedings would rest only on the "states duty to refrain from unreasonable interference with the individual's desire to defend himself in whatever manner he deems best." In Torna, the Court there found unpersuasive the defendant's claim that he had been denied due process when counsel deprived him of his right to petition the Florida Supreme Court for review."

The majority responded: "Such deprivation - even if implicating a due process interest - was caused by his counsel and not the state."

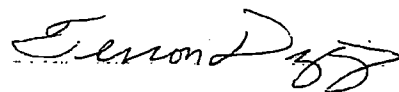
Petitioner contends that his case is distinguished from Torna. In Petitioner's case, he did not retain Eleanor Cleary, as it was that state who deprived him of his due process rights by knowingly allowing Attorney Cleary to fraudulently obtain representation and then forcing that fraudulent representation on him. Thus, allowing Eleanor Cleary to swindle Petitioner's mother out of \$10,000 given to Petitioner by his mother to retain a lawyer, which could have ^{been} used to retain a lawyer of Petitioner's choice. Forcing Petitioner to be represented by "extremely" conflicting counsel who intentionally sabotage his case by withdrawing issues

Already amended to Petitioners PCR which is supported by exculpatory evidence which proves prosecutorial misconduct and proves Petitioner innocence. Attorney Cleary's fraudulent representation forced on Petitioner by the state amounted to "fraud upon the court" and obstructed and impeded him from raising any issues properly, complying with state procedures, causing inordinate delays, withdrawing Petitioner's issue of Ineffective Assistance of Counsel of Appellate Counsel to re-instate his direct appeal as of right. Which made any state corrective process unavailable which resulted in a "fundamental miscarriage of justice." Washington v. State, 478 S.E. 2d 833, 324 S.C. 232 (S.C. 1996), "because so many procedural irregularities occurred during the course of Washington's judicial process that he has not received due process." Murray v. Carrier, 477 U.S. 478, 106 S. ct. 2639 (1986), "the existence of cause for a procedural default must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded counsel's efforts to comply with state's procedural rule." Brown v. Allen, 344 U.S. 443 (1953), "stated that cause would be established by a showing of "some interference by officials that made compliance impracticable." Amadeo v. Zant, 486 U.S. 214 (1988). see Young v. Ragen, 337 U.S. 235, 239 (1949), "requiring states to afford prisoner some "clearly defined method" to raise a claim when federal rights have been denied." The South Carolina Supreme Court has described the holding in Case v. Nebraska, 381 U.S. 336, 338 (1965), as "a determination that the Fourteenth Amendment may require the states to afford state prisoner's

Some adequate corrective process for the hearing and determination of claims of violation of federal constitutional guarantees."

Petitioner contends that he has After Discovered Evidence which proves his innocence and Prosecutorial Misconduct and proves that the State knowingly presented false testimony to obtain his conviction. McQuiggin v. Perkins, 569 U.S. 383 (2013); Herrera v. Collins, 506 U.S. 383 (1993); Hayden v. State, 299 S.E. 2d 854, 855 (S.C. 1983); State v. Spann, 513 S.E. 2d 98, 100 (S.C. 1999) (granting motion for new trial where new evidence was discovered eighteen years after the original trial; Clark v. State, 315 S.C. 385 (1993). Simpson v. Moore, 627 S.E. 2d 701, 708 (S.C. 2006) (holding that applicant was entitled to amend his PCR application to include a claim that the State failed to disclose potentially exculpatory evidence related to the charged offense of armed robbery, where the evidence was discovered during the PCR hearing).

Date: April 13th 2020



Terron Dizzley

359480

4460 Broad River Rd.

Columbia S.C. 29210

State of South Carolina

County of Georgetown

Terron Dizzley

Applicant

v.

State of South Carolina

Respondent

In The Court of Common Pleas

For The Fifteenth Judicial Circuit

Case No. 2015-cp-22-0084

Certificate of Service

I Terron Dizzley certifies that on this 13th day of April 2020 sent the courts and following parties listed below a Motion For Relief From Judgment pursuant to SCRPC 60(b) by placing in U.S. Mail at BRCI postage pre-paid sent to the addresses below; and Exhibits.

Georgetown County Clerk of Court

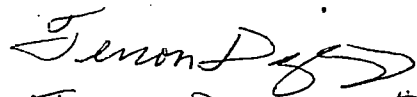
P.O. Box 479

Georgetown, S.C. 29442

Attorney General Johnny James

P.O. Box 11549

Columbia, S.C. 29211



Terron Dizzley, #359480

4460 Broad River Rd.

Columbia, S.C. 29210

State of South Carolina

County of Georgetown

Terron Dizzley

Applicant

v.

State of South Carolina

Respondent

In The Court of Common Pleas

For The Fifteenth Judicial Circuit

Case No.: 2015-CP-22-00845

Motion For Relief From Judgment

or Order and

Motion For Leave To File

Applicant moves before this Honorable Court with a Motion For Relief From Judgment or Order pursuant to SCRCP, Rule 60(b) on the grounds that:

- 1). Applicant's entire PCR was the result of fraud, misrepresentation and misconduct... resulting in extreme conflicts of interest which impeded and obstructed Applicant from presenting his claims, obtaining discovery, fully and fairly exhibiting his case and depriving Applicant of the opportunity to be heard.
- 2). Newly discovered evidence which proves Applicant's innocence, and prosecutorial misconduct which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

Statement of Facts

On November 27, 2018, Applicant had a PCR hearing in Horry County. At this hearing Applicant addressed several issues and concerns which clearly indicated that there were "extreme" conflicts with PCR counsel Att. Cleary. In response to these concerns the judge indicated that she would allow Applicant 30 days to amend and brief the issues Att. Cleary failed to raise. Shortly after the PCR Applicant filed a motion to relieve Att. Cleary as counsel and proceed pro se and be allowed to obtain discovery and amend and brief all his issues. On Dec. 16, 2018 Applicant sent a letter to Att. Cleary requesting that she relieve herself as counsel. Att. Cleary filed the motion

to relieve herself on December 27, 2018 and also on June 25, 2019.

In Applicant's motion to relieve counsel he explained to the courts that Att. Cleary obtained representation of him without his consent. Applicant also explained that previous hired Att. Lech B. Moody had done the same. Both of these lawyers were retained by Applicant's mother. Applicant contends that his mother informed Att. Cleary what had occurred with Lech B. Moody and that Att. Cleary had to speak with Applicant and get his informed consent in writing as required by the Rules of Professional Conduct before obtaining representation to avoid any further conflicts. However, Att. Cleary accepted \$10,000.00 from Applicant's mother and contacted the judge by telephone and had herself substituted as Applicant's Counsel before speaking to him and attempting to establish an attorney-client relationship as to his objectives he sought for representation and getting his informed consent in writing. See SCACR 407, Rule 1.7(B) 1, 2, 1.2; 1.3; 1.4(A) 1, 2 (B); 8.4(A)(D)(E)(G) "Consent Confirmed in Writing", requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. In re Moody, 410 S.C. 334, 764 S.E. 2d 519 (2014); In re Sturkey, 376 S.C. 286 (2008); In re Belding, 356 S.C. 319, 589 S.E. 2d 197 (2003)

Applicant contends, when he addressed this matter to Ms. Cleary she indicated that the judge already substituted her as his counsel and he was stuck with her and that Judge Seals, "He will not allow any more continuances or substitutions of counsel."

See exhibits. After obtaining this unlawful representation, Att. Cleary became "extremely" adversarial towards him. Withdrawing issues which were already amended, amending new issues and all without Applicant's consent, refusing to raise issues, obtain discovery, call witnesses and investigate and present evidence. Applicant explained to the PCR court in his motion to relieve counsel that Att. Cleary's representation was fraudulent and any judgments made pursuant to any issues Att. Cleary amended or brief would be fraud upon the court.

Applicant contends that the courts erred in substituting Lech B. Moody as his Counsel without any documentation of informed consent in writing replacing James K. Falk. Judge Seals also erred in substituting Att. Cleary replacing Lech B. Moody without any documentation of informed consent in writing from Applicant or informing Applicant of these changes, thus forcing conflicting representation on him. Ex parte Strom, 539 S.E. 2d 699 (S.C. S.Ct. 2000), Strong policy considerations dictate that a client and the court must be unequivocally informed when an attorney intends to withdraw from representing a party, for whatever reason. Equally strong policy considerations dictate that the court must, by order, approve a client's discharge of an attorney of record in a court proceeding. The conflict in understanding between Collins and Strom in this case is a perfect illustration of the need for adherence to Rule 11(b), SCRCP requirement of a court order. Furthermore, the trial court's order removing Strom as Counsel of record should not have been granted *nunc pro tunc*. Culbertson v. Clemens, 322 S.C. 20, 25, 471 S.E. 2d 163, 165 (1996).

Smith v. Bryant, 264 N. C. 208, 141 S. E. 2d 303 (1965).

Applicant contends that the motions to relieve Counsel where these issues were addressed were filed by Att. Cleary and him before any briefs were filed or rulings on this fraudulent PCR was made. However, Judge Kristie Curtis refused to set a hearing on court dockets to here these very serious motions.

Applicant also addressed these concerns in a writ of mandamus which was first filed in the Court of Common Pleas and Georgetown County Clerk of Court Alma White refused to file it. Applicant then filed the writ of mandamus in the Supreme Court of South Carolina requesting that the courts directs Judge Curtis to "protect Applicant's right to be provided with an "adequate and fair corrective process for a hearing and determination of claims of violations of federal constitutional guarantees to challenge the unjust, unconstitutional conviction which was imposed on him." By relieving Att. Cleary of this fraudulent representation, allowing Applicant to proceed pro se, Amend, and Brief all issues after obtaining discovery and submit evidence, and affidavits etc. to supports his claims. Applicant also explained in this writ of mandamus that any further attempts to force illegal representation upon him, and any ruling made pursuant to any issues amended and briefed by Att. Cleary's fraudulent representation would be "Fraud Upon The Court."

However, Judge Curtis, with a reckless disregard for Applicant's rights refused to address these motions, continued to knowingly force illegal representation upon him, and ruled on Att. Cleary's issues

Amended and briefed without Applicant's consent. Then dismissing Applicant's PCR pursuant to these issues, with rulings clearly in reference "only" to the Att. General's brief.

Applicant contends that Judge Curtis intentionally forced, fraudulent, conflicting representation upon him, thus, intentionally preventing him from presenting his claims and defense, deprived him of the opportunity to be heard and fully and fairly exhibiting and trying his case, and defiled the court itself by failing to allow the judicial machinery to perform impartially its task of adjudging cases that are presented for adjudication. Judge Curtis actions resulted in "Fraud upon the Court" pursuant to the actions of Lech B. Moody, Judge Seals, and Att. Cleary who are all officers of the court and the record clearly indicates that these representations were obtained without Applicant's consent, authorized over the telephone without Applicant's knowledge and then forced upon him thus violating Applicant's 6th and 14th Amendment Rights.

Rule 60(b), SCRPC

SCRPC, Rule 60(b)(3) states: On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
(3) fraud, misrepresentation, or other misconduct of an adverse party. Hagy v. Pruitt, 529 S.E. 2d 714 (2000), A judgment may be set aside on the grounds of fraud only if the fraud is "extrinsic"
"Extrinsic fraud" is fraud that induces a person not to present a case or deprive a person of the opportunity to be heard. Ray v. Ray, 374 S.C. 79, (2007), Rozier v. Ford Motor Co., 573 F.2d. 1332

50 A.L.R. Fed. 914 (1978). *Chenning v. Ford Motor Co.*, 354 S.C. 72, (2003), Fraud on the court requires a showing that one has acted with an intent to deceive or defraud the court.
Great Coastal Exp., Inc. v. International Broth. of Teamsters, Chauffeurs, Warehousemen and Help..., 675 F.2d 1349, (1982), "Fraud upon the court", that species of fraud which does or attempts to, defile the court itself, or is fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication.

Judicial Conduct SCACR 501

SCACR, 501 Canon 3, D(2) states: "A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407, SCACR, should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority."

Applicant contends that in his case, the PCR judge was more than aware of Att. Cleary and other attorney's pursuant to his case committed "extreme" violations of the RPC which extremely prejudice Applicant's case and is prejudicing his case. However, the PCR Court did not take appropriate actions or inform the appropriate authority.

Instead the PCR judge did the same as Judge Seals and other judges, forcing representation upon Applicant they knew was obtained by fraudulent means, thus, participating in these action

Authorizing these fraudulent representations then specifically stating to these attorney's that Applicant will not receive any more substitutions or continuances which is clearly "fraud upon the court." Then using these illegal representations in conjunction with Foster v. State, 379 S.E. 2d 907 (1989), "there is no such thing as hybrid representation" to prevent Applicant from raising his issues. However, as stated in Foster, hybrid representation does not apply to a pro se litigant filing a motion to relieve counsel. Even at this, the courts still intentionally fails to acknowledge or file or hear his motions to relieve counsel in order to protect Applicant's rights in an attempt to break free from these officers of the courts fraudulent actions so that Applicant can have an opportunity to raise his issues and be heard. Matter of Wright, 310 S.C. 191, 422 S.E. 2d 746 (1990), Respondent, an Horry County Magistrate, is charged with judicial misconduct, in that while acting as an insurance agent in May of 1987, he participated in the fraudulent procurement of a life insurance policy. Here, the submission of the fraudulent insurance application occurred prior to the Respondent taking judicial office. However, the indictment and subsequent entry into the pre-trial intervention program took place after the Respondent became a judge. This Court agrees with the Commission that it is of no consequence that the initial wrongful activity took place prior to assuming office. Canon 1 requires that a judge must "observe high standards of conduct so that the integrity... of the judiciary may be preserved." We agree with the full Commission that the Respondent is therefore, guilty of misconduct under § 1(b)(2) of the Rule on Judicial Discipline and Standards, Supreme Court Rule 34. He stands publicly reprimanded.

Denmark Mun. Court Judge Myron v. Anderson, 380 S.C. 70, 668 S.E. 2d 473 (2008).

Applicant contends that the PCR judge's Order clearly violates SCA-CR, SOI, Canon 1(A), Canon 2(A), 3(4)(5)(7), 3(D)(1)(2) and amounts to "Fraud Upon the Court" by knowingly forcing illegal representation on Applicant and knowingly ruling on issues amended and briefed without applicants consent knowingly that these amendments, and briefs contains false and inaccurate facts about Applicants case intentionally for the purpose of covering up governmental misconduct. Applicant contends that he has provided the PCR Judge, Judge Curtis with vast amounts of evidence which proves his innocence. Yet Judge Curtis is not seeking justice but seeking to continue to cover up the lies, and misconduct of the prosecution knowingly presenting false testimony and evidence throughout both of applicant's trials to obtain a conviction.

Applicant contends that in a Rule 59(e) filed by Att. Cleary on Dec. 9, 2019, page 5, paragraph 7. Even Att. Cleary acknowledges that Applicant's issues are "strong and meritorious", that her representation is a result of a "conflict of interest", and that, "It is error to allow counsel to remain as Applicant's counsel, against his wishes and when he retained her, under these circumstances." Thus, acknowledging that Judge Curtis is aware of the circumstances in which representation was obtained which did not adhere to the requirement set forth in Ex parte Strom, Culbertson and

Smith v. Bryant, 264 N.C. 208, 141 S.E. 2d 303 (1965).

Applicant contends that the PCR Courts indications in it's order that, "The efforts of PCR applicants to relieve without sufficient cause their counsels is a recurring problem, and constitute an abuse of the judicial's process, resulting in significant delays," is clearly erroneous findings of facts not support by the record. See page 52 of the courts order.

Applicant contends that when an Applicant files a Motion To Relieve Counsel under such circumstances the Circuit Judge must consider the Applicant's attempt to manipulate the judicial process. Gardner v. State, 570 S.E. 2d 184 (2002).

Applicant contends that while his direct appeal was pending he paid Private Invest. Pete Skidmore of Rock Hill S.C. \$2,500 to investigate his jurors, and he ran off with his family's money.

Applicant then paid Att. Jeremy Thompson \$12,000, and Private Invest. Ray Nash recommended by Att. Thompson \$3,000 to investigate Applicant's jurors. Att. Thompson misled Applicant, substituted himself as Applicant's appellate counsel, withdrew his direct appeal without an Anders brief, filed a PCR and then Att. Thompson and Invest. Nash abandon Applicant's PCR.

Applicant was then appointed James K. Falk. James K. Falk lied to applicant, refused to communicate with him, obtain discovery, obtain case file, Brady material or subpoena witnesses and attempted to convince applicant at his first PCR appearance to move forward with his PCR although he had not obtained any transcripts or reviewed the case. Before Applicant's PCR

he filed a motion to relieve Att. FALK which was denied and the judge granted FALK \$500 to pay for applicant's first trial transcript stating that FALK could ^{not} effectively represent applicant without discovery material. However, FALK never pursued getting applicant's discovery material and there was no communication at all with Applicant and FALK pursuant to several letters written and phone calls from Applicant and his mother.

Applicant's mother then seek representation from Dayne Phillips who indicated he would charge \$20,000 to represent Applicant. Applicant's mother informed Att. Phillips that she had to get a loan on her house and it would take a few weeks for the loan to clear. Once applicant's mother received the \$20,000 Att. Phillips then says he needs \$30,000. Applicant's mother explained to Att. Phillips that it would take her a few more weeks to come up with the additional \$10,000. Att. Phillips then told Applicant's mother if she paid him \$1,500 he would read Applicant's transcript and visit him and the \$1,500 would go towards the retainment of the \$30,000. Applicant's mother then got a loan on her car and borrowed money from family members to come up with the additional \$10,000. Att. Phillips came to see Applicant, however he never read the transcript and once Applicant's mother came up with the \$30,000 Att. Phillips said he could not take the ^{case} ~~cause~~ because he was not sure if the judge would allow him the time he needed to prepare and investigate the case.

Applicant's mother then seeks paid representation from Att. Leah B. Moody who charged Applicant's mother \$6,500 and substituted herself as Applicant's counsel without his consent. When Applicant spoke to Att. Moody during a telephone conference they

could not come to any terms of agreement. Applicant contends that he then requested Att. Moody charge his mother for the phone conference and return the remaining funds. Although Att. Moody had never gotten consent from Applicant or performed any work on his case, Att. Moody refused to return the funds paid to her and forced representation upon Applicant.

Applicant contends that Att. Cleary was made aware of all of this and yet her actions were the same. Applicant has addressed these issues to the courts and not one judge or the Att. General, Office of Disciplinary Counsel, Bar Association, Supreme Court, District Court or any officers of the court enquired into these "extreme" conflicts. The courts only forced applicant to keep representation they knew was conflicting. Applicant contends that he is indigent and his mother is a school teacher and widow. There is no evidence to support the PCR courts erroneous allegations that Applicant and his mother sought representation in these attorneys to attempt to "abuse the judicial process" and cause "significant delays."

However, the record clearly shows that there is a vast amount of evidence which proves that it is the attorney's mentioned throughout this motion who violated applicant's 6th and 14th Amendment rights, abusing the judicial process, causing judicial delays, and financially crippling applicant's family. Applicant contends that the PCR courts were made aware of these conflicts and made no enquire into the potential conflicts and assessed its threat to the fairness of the proceeding and to ascertain whether inadequate representation is too remote for further concern, or to find out if the courts needed to replace counsel. Mickens v. Taylor, 535 U.S. 162 (2002), A judge who knows or should

Know that counsel for a criminal defendant facing, or engaged in, trial has a potential conflict of interests is obliged to enquire into the potential conflict and assess its threat to the fairness of the proceeding. See Wheat v. U.S., 486 U.S. 153, 160 (1988); Wood v. Georgia, 450 U.S. 261, 272 (1981); Cuyler v. Sullivan, 446 U.S. 335, 347 (1980). Cf. Holloway v. Arkansas, 435 U.S. 475, 484 (1978). Unless the judge finds that the risk of inadequate representation is too remote for further concern, or finds that the defendant has intelligently assumed the risk and waived any potential Sixth or Fourteenth Amendment claim of inadequate counsel, the Court must see that the lawyer is replaced. See ibid.; Glasser v. United States, 315 U.S. 60, 70 (1942). Cf. Wheat, *supra*, at 162; Advisory *190 Committee's Notes on 1979 Amendments to Fed. Rule Crim. Proc. 44(c), 18 U.S.C. App., p. 1655.

Bonin v. California, 494 U.S. 1039, 110 S. Ct. 1506, 108 L. Ed. 641 (1990). To protect a defendant's right to conflict-free counsel, a trial court must initiate an inquiry when it knows or reasonably should know of the possibility of a conflict of interest, Wood v. Georgia, *supra*, at 272, and n. 18, 101 S. Ct., at 1104 and n. 18. Moreover, this Court found that "the fact that the State raised the conflict problem explicitly and requested that the court look into it" should have alerted the trial court to the need for further inquiry. Id., at 273, 101 S. Ct., at 1104. The Court held that although "it was difficult to determine from the appellate record whether an actual conflict was present," the possibility of a conflict of interest was sufficiently apparent at the time of the revocation hearing to impose upon the court a duty to inquire further." Id., at 272, 101 S. Ct., at 1104. It is axiomatic that the assistance

of counsel is among those constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error." Holloway v. Arkansas, 435 U.S. 475, (1978) (quoting Chapman v. California, 386 U.S. 18, 23, 87 S. Ct. 825 (1967)). The right to counsel's undivided loyalty is a critical component of the right to assistance of counsel; when counsel is burdened by a conflict of interest, he deprives his client of his 6th Amend. right as surely if he failed to appear at trial. See Holloway. (The mere physical presence of an attorney does not fulfill the 6th Amend. guarantee when the advocates conflicting obligations have effectively sealed his lips on crucial matters). For this reason, a defendant who shows an actual conflict need not demonstrate that his counsel's divided loyalties prejudiced the outcome of his trial. Cuyler v. Sullivan, *supra*, 446 U.S., at 349-350, 100 S. Ct., at 1718-1719. The right to conflict-free counsel is too important and absolute "to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial." Glasser v. U.S., 315 U.S. 60, 76, 62 S. Ct. 457, 467, 86 L. Ed. 680 (1942); accord Cuyler. We should be no more willing to countenance nice calculations as to how a conflict adversely affected counsel's performance." U.S. v. Cronin, 466 U.S., at 662, n. 31 (1984).

According to the PCR courts order applicant and his mother broke the law for retaining lawyers in good faith as to applicant's 6th Amend. Right and is being sanctioned and punished through his PCR which is being used as a tool to defimate applicant's mother's character for retaining counsel and seeking justice. Cuyler v. Sullivan, 446 U.S. 335,

344 (1980), "The vital guarantee of the 6th Amend. would stand for little if the often unformed decision to retain a particular lawyer could reduce or forfeit the defendant's entitlement to constitutional protection. Since the state's conduct of a criminal trial itself implicates the state in the defendant's conviction, we see no basis for drawing a distinction between retained and appointed counsel that would deny equal justice to defendants who have to choose their own lawyer."

Applicant contends that the judges accusations that he and his mother retained lawyers to "abuse the judicial process, resulting in significant delays," which Applicant emphatically denies. However, if these accusations are true then this means that Leah B. Moody, and Att. Cleary is also guilty of "abusing the judicial process, resulting in significant delays" because they the ones who 1.) unlawfully obtained representation of applicant without his consent and requested continuences to prepare for this case, all which was without Applicant's knowledge.

Applicant contends that if the judges accusation are true then the judges and the Att. General must also be found guilty of "abusing the judicial process, resulting in significant delays," whereas they are the ones who authorized these unlawful representations. Whereas, the record shows that these decisions were made without applicant's knowledge. Whereas, all of these issues could have been avoided had the courts enquired into these known conflicts and strict adherence to Rule 11(b), SCRPC when changing Applicant's counsels. See page 3 of Order of Dismissal.

Which states in reference to substitutions of Leah B. Moody and Eleanor Cleary... "the Honorable William H. Seals, Jr. granted Applicant's request after a telephone conference." Applicant contends that even the PCR court's order itself acknowledges that these representations were obtained and authorized unlawfully, without Applicant's consent, and without strict adherence to Rule 11(b), SCRPC.

Applicant contends that the PCR court relies on Richardson v. State, 377 S.C. 103, 105, 659 S.E. 2d 493, 494 (2008). However, in Richardson petitioner sought to relieve appointed counsel for reasons the court had established was a mere disagreements that counsel would not raise issues the courts determined were clearly meritless or improper for PCR. However, this not the case pursuant Applicant's reasons for relieving counsel. Applicant contends that the representation in his case is the result of an "extreme" conflict of interest whereas counsel substituted herself as applicant's counsel without his informed consent in writing after being retained by his mother.

Applicant contends that the issues he sought to raise were not meritless or improper for PCR whereas several issues were amended by Att. James K. Falk and Applicant paid Tricia Blanchette to read his transcript in 2014 and she also listed several issues that was meritorious and proper for PCR. However, Att. Cleary withdrew all of applicant's issues amended and refused to raise any of applicant's issues or present evidence to support them. Applicant contends that Att. Cleary was retained by his mother and not him and she had no right to substitute herself as his counsel and the courts had not inquired into whether Att. Cleary had consent in writing from applicant and abused it's discretion by forcing conflicting representation on him. United States v. Mullen, 32 F.3d 891 (4th Cir. 1994), The court vacated defendant's conviction for conspiracy to distribute and possess with intent to distribute over 50 grams of cocaine because the district court abused its discretion in denying her

motion to dismiss her counsel who was retained by her family and have a court-appointed attorney represent her.

Applicant contends that his motion to relieve counsel requested that he is granted the right to proceed pro se. Flanagan v. U.S., 465 U.S. 259, 104 S.Ct. 1051 (1984), No showing of prejudice need be made to obtain reversal when trial court denies appointment of counsel altogether or denies counsel's request to be replaced because of conflict of interest, since prejudice to defense is presumed. Petitioner correctly concedes that post-conviction review of disqualification order is fully effective to the extent that the asserted right to counsel of one's choice is like, for example, the Sixth Amendment right to represent oneself. Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). Obtain reversal for violation of such a right does not require a showing of prejudice to the defense, since the right reflects constitutional protection of the defendant's free choice independent of concern for the objective fairness of the proceeding. See McKaskle v. Wiggins, 465 U.S. 168, 104 S.Ct. 944 (1984). Similarly, post conviction review is concededly effective to the extent that petitioner's asserted right is like the 6th Amendment rights violated when a trial court denies appointment of counsel altogether, See Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), or denies counsel's request to be replaced because of a conflict of interest, See Holloway v. Arkansas, 435 U.S. 475, 98 S.Ct. 1173, 55 L.Ed.2d 426 (1978). McKaskle v. Wiggins, In determining whether defendant's right to present his defense pro se has been respected, primary focus must be on whether defendant had fair chance to present

his case in his own way.

Applicant contends that the attorney's his mother paid in good faith has financially crippled his mother and he still does not have a complete rule 5 discovery or case file. Applicant contends that not only has these attorney's crippled his family financially they have intentionally impeded him from presenting his case and the PCR court failing in protecting Applicant's rights has denied applicant the right to be fully heard in his defense, thus violating applicant's rights, Art. 1, § 14. Because of this the only way Applicant can protect his rights is to proceed pro se.

Applicant has not spoken to or communicated since his PCR hearing except to request that she relieve herself as counsel and to serve the lawsuit which was brought against her on June 25, 2019 before any rulings of this court had been ordered.

Applicant contends that his motion to relieve counsel if granted would not have resulted in any delays. Whereas the PCR had been held and the PCR judge addressed applicant's concerns by stating she would allow him 30 days to Amend and Brief the issues Att. Cleary failed to raise. Applicant's motion would have allowed him to obtain discovery and present an accurate defense for himself pursuant to the circumstances surrounding his case which could have been done in less time than Att. Cleary took to provide the courts with her briefs. State v. Samuel, 813 S.E. 2d 487 (2018), the defendant was clearly attempting to dispense with counsel in order to raise valid arguments and was not attempting to manipulate the process. Although Gardner permits a circuit judge to consider a defendant's attempt to manipulate the

judicial process. This Court indicated in Barnes that a defendant's improper motive or unethical conduct is not enough to preclude him from exercising his right to self-representation. Barnes, 413 S.C.3. Martinez v. Court of California, Fourth Appellate Dist. Supreme Court of U.S., 528 U.S. 152 (2000). Although criminal defendant have no federal constitutional rights to represent themselves on direct appeal from a conviction, courts may exercise their discretion to allow a defendant to proceed pro se on appeal, "Keeping the best interest of both defendant and the government in mind." U.S. v. Singleton, 107 F.3d 1091 (1997). Sixth Amendment implicitly provides an affirmative right to self-representation. Applicant contends that throughout the appeal of his conviction the courts have not protected his constitutional rights as to his best interest or the attorney's retained, appointed and forced upon him. Therefore, Applicant chooses to exercise his ~~Sixth~~^{Fifth} Amendment right to selfrepresentation to ensure his own rights have been protected.

PCR Applicant's Claims Asserted at the Hearing

Applicant contends that the PCR Courts order declining to address his claims raised at his PCR is based on erroneous findings of facts not supported by the record which are false and are based on misapplications of law and violates his Sixth and Fourteenth Amendment Rights to the United States Constitution. See order pages 50-53.

The PCR courts allegations that "Applicant has hired and fired three different PCR attorneys" is false. The record shows that the only Attorney he hired, consenting to representation is Jeremy Thompson. See documents from Jeremy Thompson, "Under the rules of ethics, a lawyer is required to have a written Informed Consent Form in his file signed by the client any time the lawyer's fees are going to be paid by someone other than the client." The decision to relieve Att. Thompson came after Att. Thompson misled Applicant and substituted himself as Applicant's Appellate Counsel, withdrew his direct appeal, filed a PCR and then abandon his obligations to Applicant along with Private Invest. Nash recommended by Att. Thompson.

Applicant contends that he never consented to any representations from Attorneys Leah B. Moody or Eleanor Cleary, there is no documentation that exist which contains Applicant's informed consent in writing, and Applicant emphatically expressed to Att. Moody and Cleary that he did not agree to these representations, which were not authorized pursuant strict adherence to Rule 11(b) of the SCRCP. Therefore, legally James K. Falk is the attorney of record. See Ex parte Strom, 539 S.E. 2d. 699 (S.C. S.Ct. 2000), Culbertson v. Clemens,

322 S.C. 20, 25, 471 S.E. 2d 163, 165, (1996), *Smith v. Bryant*, 264 N.C. 208, 141 S.E. 2d 303 (1965). Applicant contends that his mother retained both attorney's in good faith. See *United States v. Mullen*, 32 F.3d 891 (4th Cir. 1994).

Applicant contends that the PCR courts order acknowledges that "The Sixth Amendment guarantee of effective assistance of counsel is the bedrock principle in our justice system, and PCR courts should be flexible with procedural requirements before PCR applicants procedurally default substantial claims" citing *Mangal v. State*, Id., 421 S.C. at 99-100, 805 S.E. 2d. at 575-76 (2017).

However, for some reason, according to the PCR court order Applicant is not guarantee these rights of the 6th Amendment and he is not afforded this "bed rock principle or justice," and these reasons are not supported by findings of fact and conclusions of law.

Applicant contends that he raised several claims at his PCR, whereas he was interrupted and rushed on several occasions by the judge ultimately resulting in the judge cutting Applicant off completely thus violating Applicants right to be fully heard in his defense, Art. 18 14, South Caroline Constitution, 14th Amend. of the United States Constitution. Thus, denying Applicant the right to due process. However, the PCR judge indicated that she would allow Applicant 30 days to Amend and Brief the additional issues. *McCullough v. State*, 320 S.C. 270, 272, 464 S.E. 2d 340, 341 (1995), Petitioner asserts that his trial counsel was ineffective for failing to object

to the trial judge's erroneous jury instruction on malice and for failing to object to a portion of the solicitor's argument. Additionally he contends he was denied his right to a direct appeal. Unfortunately, although these allegations were raised in petitioner's application for PCR and evidence was presented regarding them at the hearing on the application, Judge Brown's order denying relief does not address the questions. Accordingly, we find it necessary to vacate Judge Brown's order and remand this matter to the circuit court to hold a new hearing. Petitioner shall be entitled to file an amended application if necessary and the order shall address all issues properly raised at the hearing. McCary v. State, 305 S.C. 329, 330, 408 S.E.2d 241, 241 (1991). Code Ann § 17-27-80 (1991), the PCR court dismissed the applicant's claims of ineffective assistance of counsel without making any findings of fact on the specific allegations raised. We reversed and remanded, holding: "The PCR court's conclusions regarding ineffective assistance are insufficient for appellate review and fail to meet the standard set forth in section 17-27-80." Id. Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), As to any allegations raised in the application or at the hearing not specifically addressed by this Order, this Court finds that the applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds that the applicant failed to meet this burden of proof regarding them. Therefore, any and all allegations not specifically addressed in the Order are hereby denied and dismissed. This

paragraph does not constitute a sufficient ruling on any issues since it does not set forth specific findings of fact and conclusions of law. This language should not be included in PCR order unless there are allegations contained in the application and or mentioned at the PCR hearing about which absolutely no evidence is presented. The Court of Appeals rejected the States argument that none of respondent's allegations were preserved for appellate review because respondent failed to make a Rule 59(e), SCRCP motion to alter or amend the judgment to include specific findings of fact and conclusions of law. The court of appeals vacated the PCR court's order and remanded the matter for a new hearing.

Fishburne v. S.C., Opinion No. 27911, WL 3437187 (2019). This case arose from the post-conviction relief (PCR) court's denial of relief to Derrick Fishburne. Because the PCR court's order contained no findings of fact as to one of Fishburne's primary PCR claims, the South Carolina Supreme Court remanded this matter to the PCR court for the PCR court to issue an order setting forth adequate findings of fact and conclusions of law regarding Fishburne's unaddressed PCR claim. In doing so, the Court stressed that PCR orders had to be prepared in compliance with section 17-27-80 of South Carolina Code (2014) and Rule 52(a) of the South Carolina Rules of Civil Procedure.

The State argues Fishburne's failure to file a Rule 59(e) motion precludes appellate review. See Marlar, 375 S.C. at 410, 653 S.E. 2d at 267 (providing "a Rule 59(e) motion must be filed if

issues are not adequately addressed" in the PCR order). We acknowledge the validity of the State's preservation argument, and we acknowledge our prior decisions have been somewhat inconsistent as to whether a Rule 59(e) motion is required to preserve an applicant's request to remand to the PCR court for the consideration of particular issues in which the PCR court failed to make sufficient findings of fact and conclusion of law. If this were a generic civil action, we would likely be quick to accept the State's preservation argument. However, because the United States Constitution's Sixth Amendment guarantee to a defendant's right to effective assistance of counsel is engrained in PCR cases, we cannot continue to permit a party's procedural shortcoming, such as the failure to file a Rule 59(e) motion, to prevent this Court from remanding claims of ineffective assistance of counsel when the PCR order does not comply with Section 17-27-80. See also Reese v. State, 425 S.C. 108, 111, 820 S.E. 2d 376, 378 (2018).

As stated almost 30 years ago in Pruitt, 310 S.C. at 256, 423 S.E. 2d at 128 (1992), "We are confident that in the future all those involved in post-conviction matters will do everything in their power to ensure that remands such as the one we order today will no longer be necessary."

Applicant contends that the PCR order stating that, "His PCR hearing was delayed on numerous occasions to accommodate his request to substitute counsel," is false in the context the allegations made as to why these request were made. Whereas, the State erroneously makes allegations that Applicant's reasons were to abuse the judicial process.

Applicant also contends that the state courts allegations that, "He has had a full opportunity, through Counsel, to address any alleged error", is also false. The PCR court order stating that applicant is procedurally at default from raising his claims is without merit and not based on the extreme circumstances and facts surrounding his case and clearly established state and federal law as to cases where a prisoner demonstrated cause for default and prejudice from the asserted error, that some objective factor impeded him from complying with state procedures, and actual innocence. Amongst these cases Applicant contends that the record clearly shows that his case is of the most extraordinary circumstances requiring procedural default must be excused.

Applicant contends that the facts show that he was not only denied his "one fair bite at the apple," he was denied the entire apple. Wilson v. State, 559 S.E. 2d 581 (2002), the court explained, "A defendant has the procedural right to 'one fair bit at the apple.'" That is, every defendant has the right to file a direct appeal and one PCR application. In this case Wilson has not had "one bite of the apple." Since he has not received either a direct appeal from his conviction or a PCR hearing. See issue raised by Applicant, Ineffective Assistance of Appellate Counsel Jeremy Thompson who withdrew his direct appeal as of right without explaining to Petitioner the merits of his appeal, the dangers of withdrawing the appeal and Att. Thompson failed to file an Anders brief or inform Applicant that he could file his own Anders brief. Thus, abandoning Applicant at a "critical stage," Penon v. Ohio, 488 U.S. 75 (1988), the courts ruled it was error for Penon's attorney to file a certificate of his view of the appeal as meritless and withdrawing as Penon counsel with-

Out filing an Anders Brief and it was error for the Appellate Court to except Person's attorney's Certificate that he viewed the appeal as meritless and allowing Person's counsel to withdraw without filing an Anders Brief and making it's own determination whether Person's attorney's evaluation of the case was sound. The Court held that Person was left completely without representation during the appellate courts actual decisional process, thus Person's Counsel abandon him at a "critical stage". The court held that prejudice was to be assumed and neither Strickland and prejudice review nor the harmless error analysis of Chapman, was appropriate.

Applicant contends that he has demonstrated that it was Att. Thompson who erred in withdrawing his direct appeal as of right, and it was error for the Appellate court to except Att. Thompson's Certificate of Withdrawal without an Anders Brief. Thus, it was these officers of the court who impeded applicant from complying with State procedures not applicant.

Applicant contends that ^{he} has demonstrated that it was Lech B. Moody who obtained illegal representation of his case and the judge authorizing this illegal representation which impeded Applicant from raising any issues. Applicant contends that he has also demonstrated that it was Att. Cleary who obtained illegal representation of his case and Judge Seals who substituted Lech B. Moody with Att. Cleary. Thus, impeding Applicant from amending or raising issues because of "hybrid representation" See Foster v. State, 379 S.E. 2d 907 (1989). Att. Cleary even went to the extreme and withdrew several issues which we already amended. According to these clearly established facts Applicant was denied

Post-Conviction Relief. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991), S.C. Code Ann § 17-27-90 provides this statute forbids a successive PCR application unless an applicant can point to a "sufficient reason" why the new grounds for relief he asserts were not raised, or were not raised properly. Case v. State, 277 S.C. 474 (1982), The Supreme Court held that where defendant's first application for post conviction relief was filed without assistance of legal counsel and was dismissed without hearing on basis that it lacked specificity, defendant's second application for post conviction relief warranted hearing despite its successive-ness. Brannon v. State, 345 S.C. 437 (2001), We find the PCR court erred in failing to ascertain the voluntariness of Brannon's withdrawal of his PCR prior to dismissing his application with prejudice. Accordingly, as there is no evidence to support the PCR Court's ruling, We remand for an evidentiary hearing on the matter. Marlar v. State, 653 S.E.2d 266, 267 (S.C. 2007), A federal court ordinarily may not consider claims that a petitioner failed to raise at the time and in the manner required under state law unless "the prisoner demonstrates cause for the default and prejudice from the asserted error."

Applicant contends that the courts failure to allow him to raise his claims under such circumstances constitutes denial of fundamental fairness shocking to the universal sense of justice. Butler v. State, 302 S.C. 466, 397 S.E.2d 87 (1990). Whereas, Applicant is innocent of the crime in which he was charged and possesses After-discovered evidence which is exculpatory which proves his innocence which shows that he was convicted as a result

the State's presentation of knowing false testimony and evidence. The State presented testimony from Douglas Morris that he knew Applicant by the nicknames "D" and "Little D" and that the victim allegedly referred to Applicant as "Little D" in reference to an alleged hearsay statement indicating that victim stated "D" or "Little D" shot him. However, the witnesses who alleged that victim made the statement indicated that the victim never indicated who the "D" or "Little D" was, whether this individual was black, white, hispanic etc. Witnesses, indicated that the individual was wearing a mask and that they could not tell the identity. The alleged hearsay statement was admitted as an exception to the hearsay rule excited utterance. The State's entire case rested on a vague statement which was hearsay, and did not identify anyone. However, evidence which was discovered after trial which contains an interview the day after the crime Dec. 2, 2008 of States witness Douglas Morris which is a transcript of his audio interview with Investigators Garrett and Dustin Morris. During these interviews Douglas stated he did not know who this "D" was and that the masked individual did not remind him of anyone that he knew.

However, the State presented Douglas false testimony throughout both of Applicant's trials, the first trial ending in a hung jury / mistrial that he knew Applicant by the nicknames "D" and "Little D" and the victim was speaking about Applicant when he allegedly stated "D" shot him. Applicant contends that he had never seen or met Douglas prior to his trials and Douglas had never seen or met him prior to these trials.

Applicant contends that he has never gone by the nicknames "Little D" or "D", and the state presented Douglas and others false testimony during pre-trial motions hearing to suppress any alleged statements by victim that "D" or "Little D" shot him on the grounds that it is hearsay. To have the alleged statement admitted as an exception to the hearsay rule excited utterance. Then using Douglas and others false testimony during trial to pin these nicknames on applicant as being the shooter allegedly mentioned by nickname.

Applicant contends that trial counsel was in possession and failed to use it in preparing a defense for applicant, thus was ineffective.

Applicant contends that the admissibility of the alleged hearsay statement was preserved for direct appeal. This evidence also contained interviews from Willie Stanley, Larry Cooper, Sonie Jones, and Toni Jones which also contains exculpatory evidence. This issue and others were raised by Att. James K. Falk. However, Att. Cleary obtained illegal representation of his case without his consent and withdrew these issues without his consent. See page 3 of order. McQuiggin v. Perkins, 569 U.S. 383, 133 S. Ct. 1924 (2013), "More than 11 years after his conviction became final, Perkins filed his federal habeas petition, alleging, inter alia, ineffective assistance of trial counsel. To overcome AEDPA's time limitations, he asserted newly discovered evidence of actual innocence, relying on three affidavits, the most recent dated July 16, 2002, each pointing to Jones as the murderer. The District Court found that, even if the affidavits could be characterized as evidence newly discovered, Perkins had failed to show diligence entitling him to equitable tolling of AEDPA's limitation period. Alternatively, the court found Perkins had not shown that, taking

Account of all the evidence, no reasonable juror would have convicted him. The Sixth Circuit reversed. Acknowledging that Perkins' petition was untimely and that he had not diligently pursued his rights, the court held that Perkins' actual innocence claim allowed him to present his ineffective assistance of counsel claim as if it had been filed on time. In so ruling, the court apparently considered Perkins' delay irrelevant to appraisal of his actual innocence claim. House v. Bell, 547 U.S. 518, 126 S. Ct. 2064 (2006), Teleguz v. Pearson, 689 F.3d 322 (2012).

Applicant contends that had Jeremy Thompson not withdrawn his direct appeal as of right, he would have been able to also shown that there was no evidence sufficient to support his criminal conviction and that viewing the evidence in light most favorable to prosecution, any rational trier of fact could have found the essential element of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 99 S. Ct. 2781 (1979), Winship, 397 U.S. 358, 364 (1970). Applicant contend that through his direct appeal he would have been able to show that the trial judge erred by denying his directed verdict motion. Whereas, Applicant was never identified by the victim or anyone as the person who committed the crime. There was no forensic, DNA, weapons or any witnesses that placed Applicant at the scene of the crime or in Georgetown County. Applicant also presented alibi witnesses who gave an account for his whereabouts during the entire time in which the crime occurred such that it would have been physically impossible for him to have committed the crime. Whereas,

the State failed to meet its burden of proof beyond a reasonable doubt as to the identity of or the essential elements of the crime. State v. Jackson, 37 Conn. App. 491, 656 A.2d 1056, 1060 (1995), State v. Lane, 749 S.E.2d 165, 167 (Ct. App. 2013), Brooks v. U.S., 717 A.2d 323, 327 (D.C. 1988), "Identity of the defendant as the person who committed the charged crime is an essential element that the government "must" always prove beyond a reasonable doubt." Winship, 397 U.S. 358, 364 (1970), State v. Bostick, 392 S.C. 134, 142, 708 S.E.2d 774, 778 (2011), State v. Schrock, 322 S.E.2d 450 (1984). Applicant contends that States witnesses Gary Gibson and Jamison Wright testified and gave statements that the masked individual that shot victim was taller than Applicant. See Tr. p. 418, L8-11; Tr. p. 405, L5 - P. 406, - P. 408, L1-19.

Applicant contends that he is unlawfully incarcerated whereas trial counsel failed to object to the trial judges decision in Applicant's first trial of 2012 to declare a mistrial. Trial counsel failed to request that the jury be polled before any decision on the mistrial was finalized to determine that no verdict could be reached, after only 2 hours and 50 minutes of deliberation. Trial counsel failed to move to quash the indictment once the Judge made his decision to declare a mistrial on the grounds that Double Jeopardy attached after the first trial. Whereas the record shows that the circumstances surrounding the judges decision was not dictated by "manifest necessity" or the ends of public justice. Therefore, retrial of Applicant was barred by Double Jeopardy. Thus, Applicant is incarcerated

ated illegally in violation of his 5th Amendment Rights pursuant to the Double Jeopardy Clause. State v. Prince, 279 S.C. 30, 301 S.E. 2d 471 (1983), Defendant was convicted in General Sessions Court, Sumter County, Ernest A. Finney, Jr., J., of distribution of marijuana, and he appealed. The Supreme Court, Little John, J. held that where jury had been deliberating only from approximately 4:30 in the afternoon until about ten o'clock at night, a portion of that time consumed by evening meals, mistrial which was ordered over defendant's objection after jury request testimony of two witnesses to be read and court was told that testimony would take approximately two hours and ten minutes was not dictated by manifest necessity or ends of public justice, and therefore retrial of defendant was barred by double jeopardy. Reversed.

Art. I § 12 of the South Carolina Constitution provides: "No person shall be subject for the same offense to be twice put in jeopardy of life or liberty... The Fifth Amendment of the Constitution of the United States provides: "No person shall be... subject for the same offense to be twice put in jeopardy of life or limb..." These sections of the Constitutions protect an accused person from multiple prosecution for the same offense after an improvidently granted mistrial. The Fifth Amendment is made applicable to the states through the due process clause of the Fourteenth Amendment.

Applicant contends that he has been diligently trying to address these issues for years and each attorney he has had has intentionally impeded him from presenting these claims and several others along with evidence, thus preventing Applicant from compl-

ying with State procedures.

Applicant contends that he did not knowingly and intelligently waived his direct appeal. This decision was made pursuant Appellate Counsel Jeremy Thompsons erroneous advice. Whereas, Applicant was not explained to by Counsel the dangers of waiving his direct appeal or the merits of the appeal. Applicant contends that through his PCR he has the right to request a belated appeal. White v. State, 263 S.C. 110, 208 S.E. 2d 35 (1974). Davis v. State, 288 S.C. 290, 342 S.E. 2d 60 (1986); Simuel v. State, 390 S.C. 247, 701 S.E. 2d 738 (2010); Sheppard v. State, 594 S.E. 2d 462, 466 (S.C. 2004), finding applicant was entitled to belated appeal where his decision not to pursue a direct appeal was based on erroneous advice from trial Counsel. Applicant contends that Att. Thompson withdrew his direct appeal as of right without an Ander Brief. Thus, prejudice is presumed and neither Strickland and prejudice review nor the harmless error analysis of Chapman is appropriate. Penson v. Ohio, 488 U.S. 75 (1988).

Conclusion

For the foregoing reasons Applicant has shown that the representations in reference to his Motion to Relieve Counsel were not legally obtained or authorized and created "extreme" conflicts of interest crippling Applicant's family financially, thus depleting all of his financial legal support, violated his 6th Amend. Right to conflict-free counsel, 6th Amend. Right to self-representation, and his statutory right to counsel in PCR, and 14th Amend. Right to Due Process.

Applicant contends that he has also shown that his case

is of the most extraordinary and extreme circumstances requiring that procedural default must be excused. Applicant has shown that the PCR Court's order contains erroneous findings of facts and misapplications of law and the order must be corrected and Applicant's Motion to Relieve Counsel be granted to relieve Counsel and allow Applicant to obtain discovery, amend and brief his issues.

Applicant has shown that his entire PCR was the result of fraud, misrepresentation and misconduct resulting in extreme conflicts of interest which impeded and obstructed Applicant from presenting his claims, obtaining discovery, fully and fairly exhibiting his case and depriving Applicant of the opportunity to be heard.

Applicant has shown which is also indicated in the PCR Order which was amended by James K. Faulk that he has New-discovered evidence which proves his innocence, and prosecutorial misconduct. This issue and several other issues were withdrawn by Att. Cleary without Applicant's consent and against his wishes.

Applicant contends that it is not plausible that anyone would withdraw issues which are supported by exculpatory evidence which proves their innocence, and it is a total miscarriage of justice for a judge to look at evidence which proves Applicant's innocence and is proper for PCR and not seek justice on Applicant's behalf.

For the foregoing reasons Applicant request pursuant to SCRCP, Rule 60(b) that he is granted relief from this judgment or Order and that he is allowed to fully and fairly present his claims.

Date: April 13th, 2020

With Kind regards,

Terron Dizzle

Terron Dizzle

4460 Broad River Rd.

Columbia S.C. 29210

State of South Carolina
County of Georgetown
Terron Dizzley
Applicant

v.

State of South Carolina
Respondent

In The Court of Common Pleas
For The Fifteenth Judicial Circuit
Case No. 2015-cp-22-0084

Certificate of Service

I Terron Dizzley certifies that on this 13th day of April 2020 sent the courts and following parties listed below a Motion For Relief From Judgment pursuant to SCRPC 60(b) by placing in U.S. Mail at BRCI postage pre-paid sent to the addresses below; and Exhibits.

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Columbia, S.C. 29210

Alma Y. White
Georgetown County Clerk of Court
P. O. Box 479
Georgetown, S.C. 29442

CIA No. 2015-CP-22-0089

Dear Clerk:

Enclosed please find one original and one copy of
Motion For Relief From Judgment pursuant to SCRC
60(b) and Exhibits, Documents Attached. Stamp file
please copy to me and a copy of this case placed on court
docket. Also Memorandum In Support Of Motion For Relief 60(b).

Attached is a copy of an Order from The Supreme Court
of South Carolina relieving Attorney Cleary of this
fraudulent representation. Therefore, I am a pro se litigant
and this Motion must be filed clocked stamped and placed
on the Court Docket and given a case number.

Date: April 13, 2020

Respectfully, Submitted,
Terron Dizzle
Terron Dizzle, #39480
4460 Broad River Rd.
Columbia, S.C. 29210

EXHIBITS IN SUPPORT OF MOTION TO CORRECT FALSE PROCEDURAL HISTORY AND LAW OF CASE

These motions are Motions for A New Trial, After-Discovered Evidence, and Brady Violations in support of motion filed and never processed by Clerk of Court of Georgetown County, Alma White. See: Page 20, Paragraph 1.

These motions were filed on December 27, 2016, clock and stamp filed by Clerk of Court, Alma Y. White. Appellant's intentions were to file these motions in The Court of General Sessions. Appellant filed these motions under the original General Sessions case number, 2009-GS-22-00778. Appellant addressed in the jurisdictional statement that he was filing these motions pursuant to South Carolina Rules of Criminal Procedure, Rule 29 (b). However, Appellant mistakenly addressed the motion to The Court of Common Pleas. As a result, Clerk of Court, Alma White changed the case number to Appellant's PCR case number.

Attached, is a copy of the refiled, corrected motion which filed to The Court of General Sessions on March 3, 2017, with a letter to The Honorable Judge Culbertson explaining that Appellant had filed this motion in The Court of General Sessions where he was not represented by counsel. Therefore, hybrid representation did not bar him from filing this motion, whereas he was represented by counsel in The Court of Common Pleas. In this motion and the attached letter, Appellant explained to Judge Culbertson that The After-Discovered Evidence proved his innocence and proved that the State knowingly presented false testimony in both of his trials to obtain an unlawful conviction .

Appellant also explained to Judge Culbertson that he needed his assistance in filing this motion because the Clerk of Court, Alma Y. White, had been refusing to file his motions alleging hybrid representation, although he was not represented by counsel in the Court of General Sessions, and that he had a right to file the motion.

Attached, is the response from Judge Culbertson pursuant to Appellant's letter and a copy of the Motion for a New Trial, After-Discovered Evidence, which was sent to Judge Culbertson. Despite the fact that the evidence pursuant to a Motion for a New Trial, After-Discovered Evidence proved that the prosecution knowingly presented false testimony in both of Appellant's trials, which proved Appellant's innocence, The Honorable Judge Culbertson response was contrary to the law that it would be hybrid representation although Appellant was not represented by counsel in General Sessions. The record shows that Judge Culbertson turned a "blind eye" to the State's Prosecutorial Misconduct, and also to Clerk of Court, Alma Y. White's conduct of depriving Appellant of access to the court. Appellant also refiled a revised version of the motion the Motion for A New Trial, After-Discovered Evidence, on April 13, 2020; Clerk of Court, Alma White refused schedule for this motion although it was stamp filed. The record also shows that his appointed PCR lawyer, James K. Faulk, raised this issue in Appellant's PCR application. However, due to Fraud Upon the Court and fraudulent representation, this issue was not ruled upon. The Courts have been adamant that about trying to "cover-up" this issue by refusing to file and adjudicate this motion.

Appellant requests to know why he has never had a hearing on this motion nor other motions listed in this Motion to Correct.



jail mail

State of South Carolina
The Circuit Court of the Fifteenth Judicial Circuit

Benjamin H. Culbertson
Resident Circuit Court Judge

Mailing: P. O. Box 479 (zip code 29442)
Location: 401 Cleland St. (zip code 29440)
Georgetown, South Carolina
Telephone: (843) 545-3030
Facsimile: (843) 545-3282
Email: bculbertsonj@sccourts.org

March 3, 2017

Terron Dizzley, #359480
McCormick Correctional Institute
386 Redemption Way
McCormick, SC 29899

RE: *State v. Dizzley* (2009-GS-22-00778)

Dear Mr. Dizzley:

I received your letter dated 2/22/2017 with enclosures contained therein concerning difficulty in filing a Motion for New Trial in the above referenced case. Although I do not know the specifics of your case, I suspect that your difficulty is due to the reasons set forth below.

You are attempting to file your motion in the above referenced case in which you were represented by an attorney other than James Falk. The above referenced case was a criminal prosecution in General Sessions Court. You have another case for post-conviction relief pending in the Court of Common Pleas in which Mr. Falk represents you. Mr. Falk cannot file your motion in the above referenced General Sessions case since he did not and does not represent you in *that* case. You cannot file the motion in the above referenced case on your own behalf since you were represented by an attorney. Our courts have held that a person represented by an attorney can only have his motion filed by the attorney (unless the motion is to relieve the attorney). Therefore, your Motion for New Trial in the above referenced case would have to be filed by the attorney who represented you in *that* case.

Terron Dizzley, #359480
McCormick Correctional Institute
March 3, 2017
Page Two

I hope this explains the reason for your difficulty in this matter.

With kindest regards, I remain

Very truly yours,

S/
Benjamin H. Culbertson

BHC/bhc

pc: James Falk, Esquire

STATE OF South Carolina

County of Georgetown

Terron Dizzley #359480

Applicant

v.

State of South Carolina

Respondent

) In The Court of Common Pleas

) Fifteenth Judicial Circuit

) 2009-GS-22-00778

) 2015-CP-22-00845

) Motion For New Trial

) After Discovered Evidence

)

)

FILED
GEORGETOWN COUNTY, SC
2016 DEC 27 PM 10:27
ALMA Y. WHITE
CLERK OF COURT
CLOCK IN TIME CANCELLED

Now comes the above named applicant who moves to set forth a motion for a new trial per. Rule 29(b). South Carolina Rules of Criminal Procedure, after -discovered evidence.

Petitioner contends the after- discovered evidence consists of transcripts of three CD's in the case of State vs. Terron Dizzley in Georgetown SC. The transcription of the CD's were provided Court reporter, Andrea R. Kelly, 401 Witherspoon Drive, Kingstree, SC. 29556, telephone (303) 354-7169 on August 28, 2012, provided to attorney , Mr. Charles David Barr, of Barr and Barr, Kingstree, SC 29556. The transcriptions of these CD's consists of interviews and statements taken by INvestigator Garrett and Investigator Dustin Morris of Georgetown of State's witnesses as listed below:

1. Willie Stanley
2. Larry Cooper
3. Douglas Morris
4. Toni Jones
5. Sonia Jones

Petitioner contends that these CD's or the transcription of them were not part of Brady disclosure material given to him by Mr. Barr. These transcriptions contained exculpatory evidence as to his innocence.

Petitioner contends that the State's case rested solely on a "hearsay" statement that the deceased "allegedly" made that "Lil D", or "D" shot him in which an unidentified shooter was described by witnesses as to have been wearing a mask and other article of clothing to conceal their identity.

Petitioner contends that the State's key witness, Douglas Morris whom he has never met, seen, or knew, whom has never met, seen, or knew petitioner, made false statements for the State and testified in both his trials, first of which ended in a hung jury, that he knew petitioner by the nickname "Lil D", or "D". Petitioner found out through the discovery of the transcription of these CD's that Morris gave a statement on Dec. 2, 2008, the day after the crime in which he was charged, that he did not know who this "D" was. Morris was a witness of the shooting that **occurred**. Morris also stated that the shooter was "kind of dark skinned". Morris was also asked by investigators did the person whom Morris saw come in, the shooter remind him of anyone he may have seen before. Morris response was "No Sir, not really".

Petitioner contends that he has never gone by the nicknames "Lil D", or "D", and that he is innocent of this crime in which he was convicted. Petitioner contends that Morris' false testimony as to his identity being that of "Lil D", or "D", played a key role in his conviction.

"Toni" Gerletha Jones, and Sonia Jones

___ Gerletha Jones, (victims) girlfriend and sister of Douglas Morris testified in petitioner's second trial. Gerletha Jones was not a witness to the crime. "Toni" or Gerletha's testimony consisted of several "heresay" statements alleging that she had overheard an argument with Evans and this "D" over the speaker phone. Sonia, Gerletha, and Morris' mother, Sonia Jones gave statements on December 2, 2008 in the presence of Douglas and Gerletha to investigators that she also heard Evans arguing on the phone with this "D" or "Lil D". Sonia stated that Evans made references in his argument with this "D" or "Lil D" about "Dee's kids or babies. Petitioner contends that it would have been impossible to have been on the other end of the telephone because he did not have any kids at that time. Sonia also stated that Evans told her that this "D" was on the run from the F.B.I.

Petitioner further contends that he has never had any federal warrants. These transcriptions of their testimonies also contain a photo line-up in which Sonia Jones and "Toni", Gerletha was asked to pick out of a line-up who they knew as "D" or "Little D"- each of them picked different people.

Petitioner contends that this evidence would have proven that:

- 1) Gerletha Jones' testimony was unreliable that,
- 2) The photo line-up was unduly suggestive, and unreliable,
- 3) That Gerletha and her mother, Sonia Jones, made up this story about overhearing Evans arguing with this alleged "D" ON the phone.

4) If there is any truth in this "alleged" phone conversation, it would be that it was impossible to have been the petitioner because he did not have kids at that time, and he never had any federal warrants.

Petitioner contends that this clearly proves that from this evidence, it would be impossible for the petitioner to be this "D". The evidence also proves that neither Sonia nor Gerletha Jones ever knew the petitioner, and that Gerletha Jones' only purpose for testifying was to "pin" the nicknames "Little D" or "D" on the petitioner. Petitioner contends that Gerletha Jones' false testimony identifying the petitioner as "D" or "Little D" and alleging that there was animosity between Laundry Evans and this "D" or "Little D" played a key role in the State's conviction where the State's case rested solely on the identification of the petitioner as being "Little D" or "D".

Willie Stanley

Stanley was also a witness of the shooting that occurred. Stanley was asked in these interviews whether he ever heard the name "Lil D" or "D" before. Stanley stated that he had heard the names mentioned by Evans. Stanley was asked by investigators in what reference Lil Evans mention these names. Stanley responded that Evans said that this "Lil D" raced cars. Petitioner contends that he has never owned a race car nor did he ever race cars.

Petitioner contends that he lived in Orangeburg SC for five years prior to this incident and continued to live in Orangeburg after the trial for approximately two years. The petitioner contends that whenever Stanley "alleged" that Evans made reference to was impossible to have been him. Petitioner also contends that Stanley's statements given to Investigator Garrett would prove that it was impossible for him to have been this "Little D". It also proves that this "hearsay" statement "allegedly" made by the deceased, Aundry Evans, was unreliable whereas Evans spoke to officers at the crime scene, and investigators at the hospital and was asked by both investigators and officers did he know the identity of the shooter, and Evans response was that he did not know who shot him. This evidence would have affected the outcome of the trial by proving that there was a clear mis-identification in which the petitioner as this "Little D".

Stanley also stated that Evans spoke to him that night saying he needed to change the way he was living. Stanley stated that he heard Evans was a "jackboy" that he robbed drug dealers. Petitioner contends that Stanley's statements as made by Gary Gibson who stated also that Evans was robbing people and breaking into houses. Gibson also stated that he felt the petitioner did not commit the crime as charged. Gibson stated that he felt Evans was murdered as a result of his **lifestyle**.

Larry Cooper

Cooper was also a witness of the shooting and stated that he had never heard the names "Little D", or "D" mentioned that night by the deceased, Aundry Evans, Or anyone.

- 1) Petitioner contends that this evidence would have affected the outcome of the trial by proving that State's key witness, Douglas Morris, made false statements when he testified identifying the petitioner as "Little D" or "D", when clearly Morris never knew the petitioner. He, In fact, stated to investigators that he did not know who this alleged "D" was. Thus any testimony from Morris as to the petitioner's identity should have been excluded, Neil v. Biggers. This evidence would have affected the outcome of petitioner's trial proving that Gerletha and her mother, Sonia Jones, (made false statements), made up this whole story about hearing Evans on the phone arguing with this "D".

Petitioner contends that if there is any truth in this story is that it is impossible for this "D" to have been the petitioner because he did not have any kids at the time nor was he ever on the run from the FBI. This information also proves that the State's photo line-up was unreliable and unduly suggestive. Moreover, Gerletha was not a witness of the crime; the purpose for her testimony was to "pin" the nicknames "D", or "Little D" on the petitioner. (Also see Neil v. Biggers. Willie Stanley's statements would also prove that there were major identification/misidentification

Affidavit of Service

2015-CP-22-00845

I Terron Dizzley certify that I have this day served the following court a notice of motion and motion for a new trial After Discovered Evidence per, Rule 29(b) South Carolina Rules of Criminal Procedure; by depositing in mail by MCI legal mail system to the address below:

Court of Common Pleas

P.O. Box 479

Georgetown S.C 29442

FILED
GEORGETOWN COUNTY, S.C.
2016 DEC 29 AM 10:27
ALMA WHITE
CLERK OF COURT
CLOCK IN TIME CANCELLED

Sworn to before J. Franklin Jr.

this 21 day of Dec, 2016

Notary Public

My Commission Expires:

12-16-2019

Terron Dizzley #359480

MCI

336 Redemption Way

McCormick S.C. 29899

STATE OF South Carolina

County of Georgetown

Terron Dizzley #359480

Applicant

v.

State of South Carolina

Respondent

) In The Court of **GENERAL SESSION**

) Fifteenth Judicial Circuit

) 2009-GS-22-00778

)

) Motion For New Trial

) After Discovered Evidence

)

)

Now comes the above named applicant who moves to set forth a motion for a new trial per. Rule 29(b). South Carolina Rules of Criminal Procedure, after -discovered evidence.

Petitioner contends the after- discovered evidence consists of transcripts of three CD's in the case of State vs. Terron Dizzley in Georgetown SC. The transcription of the CD's were provided Court reporter, Andrea R. Kelly, 401 Witherspoon Drive, Kingstree, SC. 29556, telephone (303) 354-7169 on August 28, 2012, provided to attorney, Mr. Charles David Barr, of Barr and Barr, Kingstree, SC 29556. The transcriptions of these CD's consists of interviews and statements taken by Investigator Garrett and Investigator Dustin Morris of Georgetown of State's witnesses as listed below:

1. Willie Stanley
2. Larry Cooper
3. Douglas Morris
4. Toni Jones
5. Sonia Jones

would review the videos overnight for identification purposes and would also provide them to Mr. Barr. Petitioner contends these video recordings consisted of exculpatory, favorable, and impeachment evidence; that according to the record was provided to counsel during motions of applicant's second trial, which would not be 30 days after request, and was not provided in petitioner's first trial, and was not provided to petitioner at all.

Brady Due Process Violation

1) Petitioner contends that his Due Process Rights were violated due to Solicitor's failure to disclose favorable evidence upon request. Petitioner contends that he was prejudiced by Solicitor's failure to disclose this evidence which was material to guilt or punishment. Petitioner contends that the State failed to disclose the DNA analysis of several assault rifle shells found at the scene of the crime in which he was charged.

In *Brady v. Maryland*, 373 U.S. 83, 87 (1976), U.S. Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith of the prosecution". The requirement extends to disclosure of impeachment evidence and applies regardless of whether the individual prosecutor is aware of the evidence, as long as it is in the possession of those acting on behalf of the prosecuting entity. Prosecutors have a duty to learn of any favorable evidence known to others acting on

the government's behalf in the case.

Brady's standard in cases involving DNA evidence is substantial and can include :

- Flaws in the collection process or chain of custody.
- Lab related evidence :
 - * Prior incidents of laboratory error.
 - * Failed proficiency test by the lab technicians or analysts.
 - * Inconclusive results.
 - * Evidence of contamination.
 - * DNA evidence from other crimes that might exonerate the accused in the case at hand.

On January 28, 2014 petitioner filed a motion for discovery.

The fifth paragraph of the motion requested:

5. "The result of reports of physical or mental examinations of scientific test or experiments, to include, but not limited to polygraph exams, or copies thereof, as to this defendant, the alleged victim and any other potential witnesses which are within the possession, custody or control of the State in accordance with the South Carolina Rules of Criminal Procedure, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the State."

6. All evidence favorable to the defendant or which would be helpful in the preparation of a defense or in mitigation of punishment. This includes, but not limited to the following:

- a. All information relevant to the credibility of any State witness.
 - i. All evidence or information which may be favorable to the defendant and discoverable pursuant to Brady v. Maryland 373 USC 83 (1976).

the government's behalf in the case.

Brady's standard in case involving DNA evidence is substantial and can include:

- Flaws in the collection process or chain of
of custody.
- Lab related evidence:

- * Prior incidents of laboratory error.

- Failed proficiency test by the lab technicians

2) Petitioner contends that the DNA analysis of the assault rifle shells was favorable to his defense and material to guilt and punishment. Where the Petitioner was charged with the "hands of one, hands of all" in which he was charged with the crimes also involving the assault rifle shooting.

Petitioner contends that the Solicitor spent three days during the course of trial presenting a 350 piece exhibit of assault rifle shell casings, pictures of assault rifle casing, pictures of damage to the interior and exterior of the club, and to cars which were parked outside. Solicitor presented several expert witnesses who testified about the evidence presented during the course of the three days admitting some 38 rifle shell casings into evidence as part of the Solicitor's case.

Petitioner contends that the prosecutor's failure to disclose DNA proficiency test of the assault rifle casings prejudiced him because this information could have been material for impeachment and important for cross - examination of Government's witnesses. If this evidence was disclosed and used effectively, it would have had a positive effect on the outcome of his trial.

3) Petitioner contends that he was prejudiced by the State's incomplete response to specific request not only deprived him of certain evidence, but also has an affect of representing to the defense that the evidence does not exist. IN reliance on this misleading representation, the defense might abandon lines of independent investigation, defenses, or trial strategies

Petitioner contends that the DNA analysis of the assault rifle shells was favorable to his defense and material to guilt

that if otherwise would have pursued. This failure to disclose requested evidence would also affect pretrial and trial decisions or preparation and presentation of his case.

4) Petitioner contends that he was prejudiced by prosecutor's failure to disclose favorable evidence upon request which violated his due process rights where evidence is material to either guilt or punishment. Whereas the State's case rested solely on identification, whereas, the petitioner was charged with, "hands of one, hands of all", pursuant to the assault rifle shooting. Petitioner contends that he is innocent of the charges of which he was convicted, where there is no overwhelming evidence of guilt.

5) Petitioner contends for the following reasons addressed in this motion petitioner should be granted a new trial and a full and fair hearing should be held as to these matters.

Sworn to before, _____
this 21 day of Dec., 2016

Notary Public

MY Commission Expires: _____

s, Terron Dizzley
Terron Dizzley #359480

MCI

386 Redemption Way

McCormick S.C. 29899

The Honorable Benjamin H. Culbertson
Chief Administrative Judge
Fifteenth Judicial Circuit
401 Cleland Street
Georgetown, S.C. 29442

RE: Terron Dizzley, #359480 v. State of
South Carolina; 2009-GS-22-00778

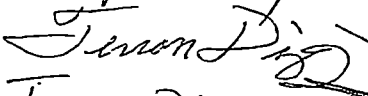
Dear Judge Culbertson:

I Terron Dizzley, was convicted
of the crime of murder in April of 2014
in Georgetown S.C. I was appointed James
K. Falk by S.C. Indigent Defense to
represent me in a P.C.R. I asked my
lawyer Mr. Falk to file a motion for
a new trial based on After-Discovered
Evidence in the Court of General Sessions.
Mr. Falk refused, stating he was only
appointed to represent me in a P.C.R.,
the Court of Common Pleas, and filing
this motion is beyond his representation.
I attempted to file these motions only
to be denied by the Clerk of Court, stating
my lawyer has to file them.

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This matter was also addressed on February 17, 2017 in my P.C.R. hearing pursuant to a motion Mr. Falk filed to be relieved as counsel in which the motion was denied and I was granted a continuance.

Date: 2-22-17

Respectfully Yours,

Terron Dizzley, #359480

State of South Carolina

County of Georgetown

Terron Dizzley #359480

Applicant

v.

State of South Carolina

Respondent

) In The Court of Common Pleas

) Fifteenth Judicial Circuit

) 2009-GS-22-00778

) 2015-CP-22-00845

) Motion For Leave to Obtain

) Discovery

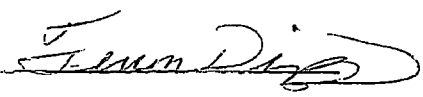
FILED
GEORGETOWN COUNTY, SC
2016 DEC 27 AM 10:21
ALMAY Y. WHITE
CLERK OF COURT
CLOCK TIME CANCELLED

This matter comes before the Hon. Chief Administrative Judge Benjamin H. Culbertson. Applicant requests permission to leave the P.C.R. proceedings to: 1) obtain discovery, (2) file a motion for a new trial for after Discovered Evidence per. Rule 29(b) South Carolina Rules of Criminal Procedure. 3) file a motion for a new trial for a Brady Due Process Violation. Brady v. Maryland 373 U.S. 83,87 (1975). Petitioner contends since convicted, hired attorney Jeremy A. Thompson, gave him erroneous advice to waive his direct appeal and then abandoned his obligations to him. Thus refusing to file any motions requested. Also petitioners appointed attorney James Falk also responded to petitioners request to file a motion for a new trial for after discovered evidence per. Rule 29(b) South Carolina Rules of Criminal Procedure, that there's no such Rule 29(b).

Petitioner contends throughout the entire process of both trials he has not been provided a full motion of discovery,

or a complete transcript of his first trial . All of which is crucial to petitioners preparation to appeal his conviction.

Petitioner contends that he has after discovering evidence that is material to his innocence and needs to obtain discovery through his Rule 5 to complete this discovery. Petitioner ask that this request is granted to obtain discovery and file these motions. Petitioner would request that a hearing is held as to these matters.

Sworn to before _____ s, 
this 21 day of Dec. 2016

Notary Public

My Commission Expires:

Terron Dizzley #359480

MCI

386 Redemption Way

McCormick S.C. 29899

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Honorable Judge Benjamin Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

v

Terron Gerhard Dizzley

Appellant

APPELLATE CASE NO. 22-000671

CERTIFICATE OF SERVICE

I, Terron Dizzley, Gwendolyn B. Frasier and LaQuesha Felder hereby certify on this 28 day of March 2023, filed a Motion to Correct the False Procedural History And Law Of Case And Request For A Hearing in the above matter by placing in U. S. mail, postage prepaid, sent to the address below:

Attorney General Allen Wilson
Attorney General Office,
P. O. Box 11549,
Columbia, SC 29211

Clerk of Court of Appeals, Jenny A. Kitchings
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Chief Judge, James Edward Lockemy
P.O. Box 750
Dillon, South Carolina 29536

s, Terron Dizzley
Terron Dizzley, 359480, Pro Se
Allendale Correctional Facility
1057 Revolutionary Trail
Fairfax, SC 29827

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAR 30 2023

SC Court of Appeals

Appeal from Georgetown County
Honorable Judge Benjamin Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

v

Terron Gerhard Dizzley
Gwendolyn B. Frasier
Laquesha Felder

Appellants.

APPELLATE CASE NO. 22-000671

NOTICE

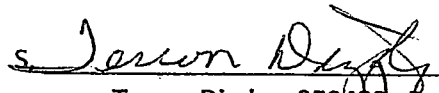
Dear Honorable Clerk Jenny A. Kitchings:

Enclosed, please find an original and two copies of a Motion to Correct The False Procedural History And Law Of Case And Request For A Hearing. Stamped filed. Please send copy back to me.

Date: March 28, 2023

With kind regards,

Clerk of Court of Appeals, Jenny A. Kitchings
South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211


Terron Dizzley, 359480, Pro Se
Allendale Correctional Facility
1057 Revolutionary Trail
Fairfax, SC 29827



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ONE RATE ■

Terron Dizley, 359480
Allendale Correctional Facility
1057 Revolutionary Trail
Fairfax, SC 29827

RECEIVED
MAR 30 2023
SC Court of Appeals

M 30
[Signature]
Clerk of Court of Appeals, Jenny A. Kitchings
South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

TRACKED



July 2022
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