

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

MAY 01 2013

Kristi L. Harrington, Circuit Court Judge

SC Court of Appeals

Case No. 2013-000692  
[ 2010-CP-10-4462 ]

Larry G. Harvin, #253468,

Appellant,

Vs.

State of South Carolina,

Respondent.

WRITTEN EXPLANATION

OF

IMPROPER DETERMINATION

LARRY G. HARVIN #253468  
M.C.J. F.1-125.B  
386 Redemption Way  
McCormick, SC 29899

Other Counsel of Record:

- APPELLANT PRO. SE. -

Matthew J. Friedman, Esquire  
- Asst. Atty. Gen.  
P.O. Box 11549  
Columbia, SC 29211

- ATTORNEY FOR RESPONDENT

AMERICAN BUREAU OF LABOR RELATIONS

OFFICE OF THE GENERAL COUNSEL

UNITED STATES DEPARTMENT OF LABOR

WASHINGTON, D. C. 20340

APR 11 1967

## SUFFICIENT FACTS

South Carolina law allows an Evidentiary Hearing for non-Post Conviction Relief ("non-PCR") allegations brought in a Petition for a Writ of Habeas Corpus < see Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (S.C.App. 1998) >; the Evidentiary Hearing is encompassed within Procedural Due Process protection where Appellant's liberty is implicated through such Evidentiary Hearing < see Green v. Catoe, 220 F.3d 220 (4th Cir. 2000) >. These two facts are clearly indisputable.

Relevant here is Judge Harrington's error of law in not only denying Appellant an Evidentiary Hearing, despite Appellant making the required allegations to receive the entitled Evidentiary Hearing, but not giving Appellant 'clear notice' of why Appellant shouldn't receive the entitled Evidentiary Hearing, in accord with South Carolina Rules of Civil Procedure ("SCRCP") 52(a); these facts are the crux of Appellant's 'Motion For Relief [Of] Judgment' brought under SCRCP 60(b)(4), on January 31, 2013 — which, Judge Harrington also Denied on February 28, 2013 without complying with SCRCP 52(a). These errors of law facilitate the instant Appeal.



## ARGUMENT AND CITATION TO LEGAL AUTHORITY

I. Judge Harrington committed an Abuse of Discretion by failing to state 'Findings of fact and conclusions of law' in conformity with SCRCP 52(a), in Denying Appellant's Motion For Relief [Of] Judgment' under SCRCP 60(b)(4).

Appellant will be able to demonstrate that the Motion brought under SCRCP 60(b)(4) alleged Judge Harrington's Conditional Order of Dismissal and Final Order were 'void' where neither Order gave 'clear notice' of the relied upon 'Findings of Fact and Conclusions of Law' as required by Rule 52(a). See also In re Treatment and Care of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 (S.C. 2002). And, further, Judge Harrington's February 28, 2013 Order Denying the Motion brought under Rule 60(b)(4) neither contains any 'Findings of Fact and Conclusions of Law' as also required by Rule 52(a).

Thus, Judge Harrington's February 28, 2013 Order denying relief on Appellant's Motion For Relief under Rule 60(b)(4) was an 'improper determination', in that Judge Harrington committed an error of law (abuse of discretion) in failing to give 'clear notice' of why relief under Rule 60(b)(4) should not be granted, as mandated by Rule 52(a).

The first part of the report deals with the general conditions of the country during the year. It is noted that the weather was generally favorable, with a moderate amount of rain and a few frosts. The crops were well advanced, and the stock raising season was successful. The people were generally content, and there was no serious trouble of any kind.

The second part of the report deals with the financial condition of the country. It is noted that the government has been successful in raising the necessary funds to carry on its operations. The public debt has been kept within reasonable limits, and the treasury is well supplied. The people are generally satisfied with the financial management of the government.

The third part of the report deals with the social conditions of the country. It is noted that the people are generally well educated, and there is a high degree of moral and social order. The people are generally content with their lot, and there is no serious social problem of any kind.

The fourth part of the report deals with the political conditions of the country. It is noted that the government is generally well managed, and the people are generally satisfied with the political situation. There is no serious political problem of any kind.

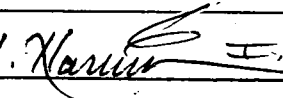
The fifth part of the report deals with the military conditions of the country. It is noted that the military is well equipped, and the people are generally satisfied with the military situation. There is no serious military problem of any kind.

The sixth part of the report deals with the foreign relations of the country. It is noted that the country has been successful in maintaining friendly relations with its neighbors. There is no serious foreign problem of any kind.

The seventh part of the report deals with the general outlook for the future. It is noted that the country is generally well situated for the future, and the people are generally optimistic. There is no serious outlook problem of any kind.

CONCLUSION

• WHEREFORE, having set forth 'Argument and Citation to Legal Authority' regarding Judge Harrington's February 28, 2013 Order, Appellant submits that this Court should allow the instant Appeal to proceed.

151 L. Harvin 

Larry G. Harvin, # 253468

M.C.J. F.1 - 125.B

386 Redemption Way

McCormick, SC 29899

4 - 26 - 13  
DATE



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PROOF OF SERVICE

I Certify before below-signed Notary Public that I have served the 'Written Explanation of Improper Determination' on Respondent's attorney of record (Matthew J. Friedman, P.O. Box 11549, Columbia, SC, 29211), also on Clerk for Charleston County Court of Common Pleas, by depositing said material(s) into the U.S. Mail with sufficient postage attached, on same below date the material(s) were also forwarded to S.C. Court of Appeals in same manner.

Sworn and Subscribed to  
before me this 26  
day of April, 2013

15X Joyce L Young  
Notary Public, South Carolina

\* My Commission Expires: 10-11-2021

L. Harvin I  
Larry G. Harvin, # 253468  
M.C.I. F.I-125.B  
386 Redemption Way  
McCormick, SC 29899



Attn: - Ms. V. Claire Allen  
- Deputy Clerk,  
S.C. Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Larry G. Harvin, #253468  
M.C.J. F.1-125.B  
386 Redemption Way  
McCormick, SC 29899

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SC Court of Appeals

Re: - Harvin v. State, Case No.  
2013-000692 ;

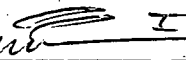
'Written Explanation of  
Improper Determination'.

Dear Ms. Allen :

I begin with thanking you for notifying me of my obligation to submit a 'Written Explanation...' in accords with SCACR 203, wherein I was presuming that such didn't apply to an Appeal upon a Motion under SCRPC 60(b). Such document is enclosed for Filing, along with a 'Proof of Service'.

Again, I Thank You.

Sincerely,

L. G. Harvin 

Larry G. Harvin, #253468  
McCormick, South Carolina

4 - 26 - 13  
DATE

• Enclosures

