

STATE OF South Carolina  
IN THE SUPREME COURT

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S.C. SUPREME COURT

In Appeal from Greenville County  
Honorable Judge G. D. Morgan Jr.  
Court of Comm Ples,

Robert Max Watkins

Petitioner

STATE OF South Carolina

Respondent

Appellate Case No 2023-001600

Petition for a Writ of Certiorari

Robert M. Watkins  
Pro-se Petitioner  
Livesay Corr. Inst  
P O Box 580  
Una S.C. 29378

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## Question or issue presented

1. Whether Judge G.D. Morgan Jr. abused his discretion and committed error of law in summarily dismissing Petitioner Watkins Brody violation claim for a new trial on grounds that it was untimely and improperly successive and barred by res-judicata, in his final Order of dismissal of case 2020-CP-23-00908?
  
2. Whether Judge G-D Morgan Jr. abused his discretion and committed an error of law in summarily dismissing all other issues raised in Petitioner Watkins Successive Post Conviction Relief Application on grounds that it was untimely and improperly successive and barred by res judicata?

## STATEMENT of Case

Petitioner Watkins on January 31 2014 filed an Application for Post Conviction Relief Case 2014-CP-23-00589, in the attachment Form 5 Application for Post Conviction Relief page 8 & 10 (d) Petitioner Watkins claims a Brady violation U.S.C.A. 5<sup>th</sup> 14<sup>th</sup> on page 15 11 (d) Petitioner Watkins claim he is being held in custody in violation of his Due Process of Rights to a fair trial, on grounds that the government violated his 5<sup>th</sup> 14<sup>th</sup> U.S.C.A. Rights pursuant to Brady v Maryland, 373 U.S. 83 (1963). In failing to disclose favorable evidence to him that is material and that there exists a reasonable probability, that disclosure of the evidence would have changed the outcome of the proceeding. United State v Bagley, 473 U.S. 667, 682 (1985). He amended the application on May 2 2014. pgs 1 of 6. The state made its return on [redacted] denying all the allegations in the Petitioner's Application for PCR and requesting that a evidentiary hearing be scheduled and counsel be appointed. SCRCP Rule 71.1 (d). On April 22 2014 an evidentiary hearing was held before Judge Edward W. Miller in which no Brady violation claim was issued. it was never brought up by Petitioner Watkins PCR Counsel.

during the PCR Evidentiary hearing, no facts no argument presented, there is nothing in the record of the PCR Evidentiary hearing on April 22, 2014 Before Judge Edward W. Miller of case 2014 CP-23-00589 that a determination could be made, that Petitioner Watkins Brady violation claim stated in his PCR application on page 8 #10(a) and page 15 11(d) was based upon non disclosure of the Greenville Police Incident dispatch Detail Report. Plus Petitioner Watkins didn't receive the evidence of his brady violation claim he raised in his successive PCR application case #2020-CP23-00908 until April 27 2015. In which he claims and argues that the prosecution Brady v. Maryland, 373 US 83 (1963) when it withheld or failed to disclose the Greenville Police Incident dispatch Detail Report. Judge Edward W. Miller issued an Order on Oct 2, 2015 denying Petitioner Watkins 1st PCR application case 2014 CP-23-00589, In that order no Brady violation was argued or ruled upon (adjudicated). Petitioner Watkins Appellate Defense Counsel on Appeal of Judge Edward W. Miller Oct 2, 2015 order denying and dismissing Petitioner Watkins PCR application 2014-CP-23-00589 with prejudice.

To The S.C. Supreme Court filing a Johnson Petition.  
The S.C. Supreme Court transferred The Appellate Case  
no 2015-002191 down to the S.C. Court of Appeals,  
on October 5<sup>th</sup> 2017 Clerk of Court Jenny Abbott Kitchings  
issued an Order stating this matter is before the  
Court on a petition for a writ of certiorari following  
the denial of Petitioner's application for post conviction  
relief. Petitioner's counsel asserts that the petition  
is without merit and requests permission to withdraw  
from further representation. Petitioner filed his pro-se  
petition. Based on the rule of the panel after careful  
consideration of the entire appendix as required by  
Johnson v State, 294 S.C. 310, 364 S.E.2d 201 (1988),  
the petition for a writ of certiorari is denied  
and Counsel's request to withdraw is granted.  
Appellate Case 2015-002191

## Argument

1. PCR Court Judge abused his discretion in summarily dismissing Petitioner Watkins Application for Post Conviction Relief case 2020-CP-23-00908 on grounds that it was untimely, improperly successive and barred by the doctrine of res judicata in reference to Petitioner Watkins Brady violation claim.

Petitioner Watkins filed a successive Application for Post Conviction Relief case 2020-CP-23-00908 with the Court of Common Pleas Greenville County on February 13, 2020. Attached to that application numbered  $\Delta$  Sworn Affidavit he stated Grounds for successive application, and sufficient reasons why new grounds for relief were not raised in prior application. Id page  $\Delta$  Through  $\Delta$ .

" Petitioner Watkins filed his first PCR Application case 2014-CP-23-00589 January 31, 2014. The state made its return on July 11, 2014. In which Counsel Robert Mills Kriail Jr. was appointed pursuant to SCRPC Rule 71.1(e) in which any amendment to his PCR application would have to

submitted to the court through counsel State v Stuckey  
333 S.C. 56, 508 S.E.2d 564. Petitioner Watkins did  
raise himself pro se before counsel was appointed  
pursuant to SCRCP 711(d). The issue # 10(d) Brady  
violation U.S.C.A. 5<sup>th</sup> 14, 11(d) Applicant claims he is  
being held in custody in violation of his due process  
of rights to a fair trial, on grounds that the government  
violated his 5<sup>th</sup> 14<sup>th</sup> U.S.C.A. Rights pursuant to Brady  
v Maryland, 373 U.S. 83. In failing to disclose  
favorable evidence to him that is material and that  
there exists a reasonable probability that  
disclosure of the evidence would have changed  
the outcome of the proceeding. United State v  
Bagley 473 U.S. 667, 682 (1985) Id in first.  
PCR application case # 2014-CP-23-00589, pg 8, pg 15.

This Brady claim had nothing to do with  
The Prosecution failure to disclose the Greenville  
Police Incident dispatch Detail Report, Brady violation  
Petitioner Watkins is claiming in his successive  
PCR application case 2020-CP-23-00908 Filed on  
February 13, 2020 because he didn't discover this  
Brady violation until April 27, 2015. Petitioner  
Watkins didn't even know about the material  
evidence that the Greenville Police incident dispatch

contained, that wasn't disclosed to him until April 27, 2015.

He couldn't raise a Brady violation based on the non-disclosure of The Greenville Police Incident Dispatch Detail Report until April 27, 2015, by that time, the Evidentiary hearing had been held and at the conclusion of that Evidentiary hearing on April 22, 2015 Judge Edward W. Miller on the record had denied the application: Td case 2014-CP-25-00584 PCR transcript pg. 49 line 9-12 Before Judge Edward W. Miller. He didn't issue an order until October 2, 2015. Petitioner Watkins didn't even raise or bring the Brady violation issue up that he included in his PCR application case 2014-CP-23-00584 during the PCR Evidentiary hearing on April 22, 2015. Judge G.D. Morgan Jr.

finding in his final order of Dismissal of Case 2020-CP-23-00908 is an abuse of his discretion and error of law and facts. That Petitioner Watkins failed to show that his claim could not have been discovered with diligence and timely raised in his prior action. That notably, in his response, he admits again that the basis for his claim that information was withheld contrary to Brady v Maryland 373 US 83 (1963)

was known to him as early as April 27, 2015 (Response filed July 13, 2021 at 12) Applicant raised a Brady claim in his 2014 application, and Judge Miller did not deny the prior application for relief until October 2, 2015. (See Conditional Order at 5-6)

Assuming only for the sake of argument that Applicant could show that a report was wrongfully withheld (which this Court does not decide), Applicant has not shown that he timely filed or that this application is not improperly successive. See Arce v State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991) (Applicant's burden to show a claim "could not have been raised" in his prior PCR litigation.); S.C. Code Ann. § 17-27-45(c) (requiring applicant claiming "there is evidence of material facts not previously presented and heard that require vacation of the conviction or sentence" to show he has timely filed "within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence").

Applicant has had one full prior PCR action, 2014-CP-23-00589, including on appeal from the denial of relief. (See Conditional Order at 5-8)

The instant application on the same judgment is both untimely and impermissibly successive.

Further, as set out more fully in the Conditional order, this Court also finds that the application should be dismissed as barred by res judicata.

Therefore, this Court reasserts all its specific findings in the conditional order of dismissal and concludes that the application must be summarily dismissed as untimely, improperly successive, and barred by the doctrine of res judicata. It is Therefore Ordered that for the reasons set for in the Court's Conditional order of dismissal, and the additional findings herein, the application for post conviction relief is denied and dismissed. Id in Case No. 2020-CP-93-00908

Final Order of Dismissal page 2 of 3 and 3 of 3.

Petitioner Watkins states is an abused of Judge G.D. Morgan Jr. discretion, were Petitioner Watkins has not failed to show that he could not raised the Brady violation claim in reference to the information that was withheld from him contrary to Brady v Maryland, 373 U.S. 83 (1963) that was known to him as early as April 27 2015, when the information was made available to him after his 1<sup>st</sup> PCR

application was already filed on June 31 2014 and the evidentiary hearing held on April 22 2015. Judge B. D. Morgan Jr. doesn't explain how Petitioner Watkins could have raised this Brady violation based on information he received on April 27, 2015 in his PCR application filed on Jun 31 2014 or during the PCR evidentiary hearing on April, 22 2015 by supporting language. Petitioner Watkins gives his reasons why he couldn't raise this Brady violation he is claim in his successive PCR application case 2020-CP-23-00908 he filed on Feb 13, 2020 in his prior PCR application case # 2014-CP-23-00889 in his the sworn affidavit ~~Δ~~ through ~~Δ~~ and in his Applicant's response to the States Conditional Order of Dismissal Case 2020-CP-23-00908 Dated July 11, 2021 filed July 16, 2021 pg 13 of 20. Res judicata doesn't applies to the Brady claim, no Brady violation was raised and argued during the PCR evidentiary hearing on April 22, 2015 of case 2014-CP-23-00889 and could not have been raised based upon non disclosure of the Greenville Police Incident dispatch Detail Report discovered on April 27, 2015. Because Petitioner Watkins has shown and proved that he could have raised the

Brady violation claim he is raising in his PCR application case 2020-CP-23-00908 has raised it in his prior first PCR application case 2014-CP-23-00589. In which even just on the date he received it on April 27, 2005 alone, results in Judge G.D. Morgan final order of dismissal of Petitioner Watkins PCR application case 2020-CP-23-00908 as being untimely and improperly successive and barred by the doctrine of res judicata.

is an abuse of his discretion and error of law.

see also Petitioner Watkins case no 2020-CP-23-00908 June 16, 2021 Applicant's Response to Respondent's Conditional Order for Dismissal specific reasons the Respondent's Conditional order for Dismissal shall not become final filed on July 13 2021 page 13 of 18 through page 17 of 18 showing the reasons Petitioner Watkins could not raise the

Brady violation he is raising in his successive PCR application case 2020-CP-23-00908 in his first PCR application case 2014-CP-23-00589. making Judge G.D. Morgan findings in his final order is misplaced and unsupported by the facts and evidence of Petitioner Brady violation claim. See on page 2 of 3 of Judge G.D. Morgan's, Jr. final order of dismissal. The findings is an attempt to

Mislead this court. committing an act of fraud, in  
manipulating the facts and evidence to suggest that  
The Brady violation noted in Petitioner 1st PCR application  
Case 2014-CP-23-00589 although alleged in that  
application but was never brought up during the Evidentiary  
hearing and was never ruled on, is the same Brady  
violation Petitioner is attempting to raise in his successive  
PCR application Case 2020-CP-23-00908, based on  
a Greenville Police Incident dispatch Detail Report  
Petitioner received on April 27, 2015. after he had  
already had his PCR Evidentiary hearing under  
his first application Case 2014-CP-23-00589 on April  
22, 2015, Petitioner could not raise an issue concerning  
evidence in his April 22, 2015, Evidentiary hearing of  
Case 2014-CP-23-00589 when he didn't receive the  
evidence concerning the issue "Brady Violation until  
April 27, 2015. The statute of limitation doesn't apply,  
nor is the Brady violation claim in his PCR  
application Case 2020-CP-23-00908 successive,  
and it was raised in his prior 1st PCR application  
Case 2014-CP-23-00589, there is not an argument the Petitioner  
is presenting in his successive PCR application Case  
2020-CP-23-00908 concerning a Brady Violation  
based on the same facts and evidence in Petitioner's

PCR application case 2014-CP-23-00589 that being argued in the successive PCR application case 2020-CP-23-00908. So to summarily dismiss Petitioner PCR application case 2020-CP-23-00908 Brady claim barred by the doctrine of res judicata is an abuse of the Judge G.D. Morgan Jr. discretion and error of law its not applicable in reference to the Brady violation claim used in case 2014-CP-23-00589 and Case 2020-CP-23-00908. To address Judge G.D. Morgan findings that Petitioner failed to show that his claims could not have been discovered with diligence and timely raised in his prior action (Case 2020-CP-23-00589) "Id" in final Order of Dismissal page 2 of 3. Judge G.D. Morgan Jr. findings he did not mention that Petitioner could have raised the Brady violation in which Petitioner claimed pursuant to Brady v Maryland 373 U.S. 83 (1963) withheld the Greenville Police Incident Dispatch Detail Report in his first PCR application case 2014-CP-23-00589 in which an evidentiary hearing was held on April 22, 2015, and Petitioner didn't discover that the information was withheld as early as April 27, 2015. The fact that Petitioner didn't receive the Brady information until April 27, 2015 is proof that he couldn't have argue that Brady claim

on April 22, 2015 because he hadn't discovered the Brady violation early enough to be able to argue the Brady violation. Based on the information he received on April 27, 2015, so to summarily dismiss Petitioner's PCR application 2020-CP-23-00908 Brady claim is being untimely is not applicable, and an error of law and abuse of Judge G.D. Morgan Jr. discretion. See Petitioner Watkins

Brady violation argument in his application for Post Conviction Relief case 2020-CP-23-00908 successive PCR application. Petition basically brief the issue out: page 15 through pg 18 attached to PCR Application 10 (v) (1) (a). Petitioner amended the application expanding more on the Brady violation page 191 through page 196. The Judge G.D. Morgan Jr. (Petitioner presented a preponderance of evidence in which no evidentiary hearing was necessary because petitioner put forth his claim with supporting evidence that would entitle him to a new trial pursuant to Brady v. Maryland, 373 U.S. 83 (1963)

Judge G.D. Morgan abused his discretion and committed error of law in dismissing Petitioner Watkins' Brady violation claim in his PCR application case 2020-CP-23-00908 on grounds that it was untimely improperly

successive and barred by res-judicata, and did not grant Petitioner Watkins a new trial pursuant to Brady v Maryland 373 U.S. 83 (1963).

see Petitioner Watkins Application for Post Conviction Relief. filed on February 13, 2020 case 2020-CP-23-00908 --  
Brady issue page 1 through 5 Sworn Affidavit stating Grounds for successive PCR application and sufficient reasons why Brady violation issue for New trial for were not raised in prior PCR application case 2014-CP-23-00589. Then on page 2-12 Petitioner argue his Brady v Maryland 373 U.S. 83 (1963) violation claim for a New trial with supporting exhibits. as evidence Dated 2-9-2020 filed Feb 13 2020. He amended and expanded on his Brady violation claim for a New trial date 9-10-2020 filed on September 23, 2020. page 191 through page 206. Petitioner Watkins further Amended the Brady issue on page 216 through page 225. All Id in PCR application Case 2020-CP-23-00908  
Based on the preponderance of evidence presented to support Petitioner Watkins Brady violation claim for a New trial. In

Issue 2

Judge G.D. Morgan Jr. abused his discretion and committed error of law in summarily dismissing all other issues raised in Petitioner Watkins successive PCR Application on grounds that it was untimely and improperly successive and barred by res judicata.

argument

Petitioner Watkins argues that his due process and equal protection of right, to SCRPC Rule 71.1(d) was violated by Greenville County through Robert Mills Atrial interference to his first PCR application Case 2014 CP 23-00589. Petitioner Watkins claim that SCRPC Rule 71.1(d) was not complied with, in which under this procedural law Robert Mills Atrial Jr. had a duty on behalf of Greenville County to insure that all the available grounds that Petitioner Watkins is raising in his successive PCR application, should have been raised in his first PCR application, and properly presented and argued on the record during the PCR Evidentiary hearing of Case 2014 CP 23-00589 on April 27 2015 Before Judge Edward W. Miller. - see Petitioner Watkins argument in his response to the States Conditional order of Dismissal dated July 11 2021 Case 2020-CP 23-00908 filed July 16, 2021 page 2 of 20 through p 19 of 20.

and his June 16, 2021 Response to Respondent's  
Conditional Order for dismissal case 2020 CP 23-00908  
filed July 13, 2021 page 2 of 18 through page 17 of 18

Reason as to why the States  
Conditional Order for dismissal should not  
become final is facts and evidence as to why  
Petitioner PCR application case 2020 CP 23-00908  
should not be dismissed as untimely and  
improperly successive and barred by res-judicata.

Had SCRPC Rule 71.1(b) been complied  
with, Petitioner Watkins would have received one  
full bite of the apple as were Matthew v. Evans,  
105 F.3d 907, 916 (1997) S.C. 1976 Code of Law  
§ 17-27-90, Aice v. State, 305 S.C. 448, 452, 409  
S.E.2d 392, 395 (1991). The law in S.C. is  
that a claim of ineffective assistance of PCR  
Counsel is not ground for filing a successive  
PCR application. Aice v. State, 305 S.C. 1976 Code  
of Law 17-27-90 Sup. Ct. Rules, Rule 50(3) (Repealed)  
USCA Const Amend 6.

Petitioner Watkins claims the system has  
simply failed him, and that to continue his  
imprisonment due to the procedural irregularities

of SCRPC Rule 71.1(d) where his PCR Counsel Robert Mills Arisail Jr. failed to insure that all available grounds for relief are included in his first PCR application case 2014-CP 23-00589 and amend it if necessary continuation of his imprisonment without review would amount to a gross miscarriage of justice. Petitioner Watkins did not receive due process and equal protection of SCRPC Rule 71.1(d) in which Greenville County through the appointment of Robert Mills Arisail Jr. used Mr. Arisail Jr. to violated Petitioner Watkins Due process it right and equal protection of SCRPC Rule 71.1(d) to insure that Petitioner Watkins had 1 full bite of the apple in his first PCR application case 2014-CP 23-00589 and at the PCR Evidentiary hearing on April 22, 2015. In which Pursuant to SCRPC Rule 71.1(d) The issues Petitioner Watkins raises in his successive PCR Application Case 2020-CP 23-00908 should have raised in Petitioner Watkins 1<sup>st</sup> PCR application 2014-CP 23-00589 and presented and argued during the Evidentiary hearing on April 22, 2015. As a result of those issues of Constitutional violations that resulted in a conviction Petitioner Watkins did not have the benefit of a direct Appeal of those issues.

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For instance, Petitioner Watkins' Brady violation claim: interference to the prosecution with holding the Greenville Police Incident Dispatch Detail Report. Petitioner Watkins raised in his successive PCR application case 2020-CP-23-00908. That he received on April 27, 2015. After he had already had his first PCR application case 2014-CP-23-00589 filing of Applications on Jan 31, 2015 and Evidentiary Hearing on April 22, 2015. There is no way he could have raised a Brady violation claim for a new trial in when he didn't receive the material evidence until April 27, 2015; So this issue of Brady is not improperly successive. I wasn't raised in his <sup>1st</sup> PCR application case 2014-CP-23-00589 or during the evidentiary hearing on April 22, 2015 so it's not barred by res-judicata. There is no statute of limitation for raising a Brady violation claim or fraud upon the court.

It is the government's responsibility to protect a Petitioner's due process of rights from being violated by the government. This right is violated under the government non-compliance with S.C. Rule 71.1(c)(1), where during the Post-Conviction Relief Procedural Act Petitioner do not have a constitutional right to counsel, leaving citizens

untrained in criminal or civil law to defend for themselves and for assistance dependent of appointment of counsel pursuant to SCRCR Rule 71.1(d) to assistance them.

This counsel is the only alternative remedy provided by the government to Petitioner whose liberty and life has been taken unconstitutionally by the same government.

Under 71.1(d) once this counsel has been appointed due to Petitioner Watkins, if this counsel doesn't insure that all available grounds for relief are included in his first PCR application, or amend the application on behalf of Petitioner Watkins,

he can not amend this application pro-se. State v. Strickland 333 S.C. 56, 508 S.E.2d 564 (1998); State v. Dunbar 356 S.C. 138 142, 587, S.E.2d 691, 693-94 (2003); Foster v State 298 S.C. 306, 379 S.E.2d 907 (1989). Non compliance with SCRCR

Rule 71.1(d) is an procedural irregularity that occurred during course of petitioner Watkins judicial process that deprived him of due process, in which he never had an opportunity to appeal those grounds raised in his successive PCR Application, because they were not included or amended in his first PCR application due to the procedural violation of SCRCR, Rule 71.1(d). Petitioner Watkins case is a complicated one where petitioner represented himself pro-se during the retrial of Indictment 2002-6523-1003 where he was found guilty on September 24 2008.

## Conclusion

Petitioner's writ should be granted based on the preponderance of the evidence present in his PCR application case 2020-CP 23-00908 and in his response to the Respondent's Condition order for dismissal in which in the Respondent's final order of dismissal is based on no evidentiary support and is based upon an abuse of discretion and error of law. Petitioner's Brady violation for a new trial should be granted, where Petitioner has shown based on a preponderance of the evidence, that Judge B.D. Morgan order of dismissal of Case 2020-CP 23-00908 is an error of law pursuant to violation of Brady v Maryland, 373 US 83 (1963) to dismiss his Brady request for a new trial, abusing his discretion.

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