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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

In the Supreme Court

York County, Eugene C. Griffith, Judge

Petition for Leave To Make

And File A Motion 60(b)

Ben Robert Stewart,

Petitioner,

v.

State of South Carolina,

Respondent,

Appellate Case No: 2023,001478

Ben Robert Stewart, 223006

990 Wisacky Highway

Bishopville, South Carolina 29010

Petition For Leave To Make And File A Motion
I, Ben Robert Stewart, filing pro se the petition for leave
to make and file a motion 60(b) in the lower Court,
The Petitioner confer jurisdiction to this Honorable Court
by way of Rule 267 SCACR, whereas an appeal for Post
Conviction Relief was taken. see Rule 243

Petitioner request this Honorable Court for leave to make
and file a rule 60(b) motion in the lower Court whereas on June
21, 2024, Petitioner filed, Affidavit; Motion To Relieve Counsel and
Vacate or Remand For Default, in response to Appellate Defender, Sarah
E. Ship, Esquire, Writ of Certiorari on June 3, 2024 which contained
one argument for this Court. Petitioner cited that Attorney Shippe
failed to correct mishaps as well as procedural errors;

Petitioner motion for leave should be granted for the following
reasons: (1) Petitioner seeks to file a Rule 60(b) contending section(s)
(1) whereas controlling law was not used on the final Judgment according
to 17-27-80 s.c. code ann, see Kemp v U.S.

(2) Petitioner seeks to file a Rule 60(b) contending section(s)
(2) whereas PCR Attorney did not file a mandated 59 Motion and did

not submit evidence of affidavits of Val Hudson or Munday Bishop which was filed along with the initial PCR Application on Dec. 9, 2013, furthermore, the Prosecutor or witness testified falsely at the PCR hearing on April 17, 2023 and further investigation and a request for evidence will reveal that the evidence is related to a Brady, supra, violation also a jailhouse phone conversation will reveal evidence relevant to Brady.

(3) Petitioner seeks to file a Rule 60 (b) contending sections (3) whereas trial attorney, the Solicitor, PCR attorney has committed misconduct classified as Brady violations, 8.4 Rules of Professional Conduct, 38. Rules of Professional Conduct, Special Responsibilities of a Prosecutor sec. (a). Petitioner was directly indicted while in Pennsylvania without a warrant or cause and no waiver to such proceedings, see; *Dunaway v. NY*, 442 U.S. 200 (1978) also see; U.S. Const. IV and V whereas Petitioner was transferred unlawfully without just compensation. i.e., Petitioner direct indictments are dated after he was arrested in Pennsylvania. six months. Trial Attorney denied assistance of counsel under the *Nance v. Ozmint* holding and indeed failed to advocate on behalf of Petitioner when Petitioner objected to the proceeding by way of Exh B2 Pretrial Emergency Writ of Habeas Corpus yet both conspired to defraud the proceedings; concealing the fact that regardless Petitioner is adjudged to be mentally ill because he is a Social Security

dependant on Social Security Disability and did not apply to the Interstate Agreement on Detainer's Act, 18 USCA App. 2, 2; 17-11-10 et seq. regarding Art VI (b) which states: "No provision of this agreement and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill." moreover, PCR Attorney received these documents however him nor Ms. Shipe submitted them into court and apply them toward the IAD violation. also 71.1 (F), and 17-27-80 and a incomplete record.)

(4) Petitioner seeks to file a Rule 60 (b) contending section(s) (4) whereas two circumstances render this instant case void (1) there is no probable cause used in this case, therefore the lower Court lacked jurisdiction and the sentence and conviction is void. (2) The Interstate Agreement on Detainer's Act, 18 USCA App 2; 2; 17-11-10 et seq Art VI (b) dose not apply to a mentally ill person, according to Exh B1; Pennsylvania Bureau of Disability Determination; and also Exh #21 Inmate Grievance Step 1, classified Petitioner as mentally ill.

(5) Petitioner seeks to file a Rule 60 (b) contending section(s) (5) whereas a significant change either in factual conditions or in law renders continued enforcement detrimental to the public interest see; Ruffo v. Inmate of Suffolk County Jail, 502 U.S. 367 (1992) also; Horne v. Flores 557 U.S. 433 (2009) Court of Appeals should have inquire whether changed conditions satisfied EEOA, on remand, district court abused its

discretion on remand by focusing only on increased funding for ELL programs. The South Carolina Department of Corrections has changed Petitioners classification to mental illness.

Further, Petitioner expounded the importance of the 60(b) motion in Petitioner's Affidavit, Motion To Relieve Counsel And Vacate or Remand for Default to this Honorable Court at pg 25. filed June 21, 2024.

Conclusion And Relief

(b) The request this Honorable Court for leave to file a Motion 60(b) pursuant to Sections 1, 2, 3, 4 And 5. is a case whereas Petitioner is unlawfully transferred, unlawfully tried, and unlawfully convicted; without probable cause; taken without just compensation; lacking assistance of counsel challenging adversary; Misconduct in office; unlawful detention that festered into unlawful custody; rendering all procedures and process void; indeed with such redress of grievance and change circumstances that require relief from judgment or a miscarriage of justice will prevail

~~Ben Robert Stewart~~
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cc/

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