

August 18, 2013

Dear Honorable Clerk, / Attorney General

Please find enclosed a true copy of Correspondence  
to Mr. Robert M. Pachek Esq. / ~~Answer Affidavit / Date 2-1-13~~

The petitioner respectfully refutes Counsel's failure  
to raise All valid issues that were newly / After Discovered  
and are relevant to the S.C.R.Crim. P. Rule 29(b) Motion  
for a New Trial, claims fall under the "discovery Rule" Coats v. State (SC 2003)

This Honorable Court has held that procedures prescribed  
by Anders v. California, 386 U.S. 738 (1967), "Appellate Counsel (~~State~~)  
is required to engage in a conscientious investigation of the  
possible grounds of Appeal and brief arguable issues before  
Appellate Counsel files his/her briefs in question.

The Constitutional requirement of Substantial equality  
and fair Process can only be attained when Counsel acts in  
the role of an active advocate in behalf of his client, as  
opposed to that of Amicus Curiae.

The Petitioner is entitled to his one fair bite of the  
apple Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581,  
582 (2002).

~~Also please send a Clock Stamped Copy back to the  
petitioner in the Self-Addressed and Stamped envelope  
that is enclosed for your convenience.~~

God Bless You!

Respectfully Submitted

RECEIVED

AUG 16 2013

SC Court of Appeals

Noel E. Gray, Jr.  
#307590

NOEL E. GRAY JR #307590  
MURRAY 212 B  
BROAD RIVER CORR. INST.  
4460 BROAD RIVER RD.  
COLUMBIA, SC. 29210

AUGUST 12, 2013

MR. ROBERT M. PACHAK, ESQ.  
APPELLANT DEFENDER  
P.O. BOX 11589  
COLUMBIA, SC. 29211-1589

BRIEF FILING DATE:  
APRIL 12, 2013

Re: APPELLANT COUNSEL'S CORRIGENDUM; AND TO INCORPORATE ALL APPELLANTS  
ISSUES RAISED IN HIS S.C.R. CRIM. P. RULE 29(b) AFTER- DISCOVERED EVIDENCE  
CLAIMS THAT ARE RELEVANT TO REVERSAL OF SENTENCE AND CONVICTION.

Mr. Pachak,

Sir I would like to thank you for what you are doing  
in my case. But, I have a delima in your representation.

The South Carolina State Supreme Court held that the  
procedures prescribed by Anders v. California, 386 U.S. 738 (1967)  
applied in PCR Matters see Johnson v. State, 294 S.C. 310, 364 S.C. 2d-  
201 (1998), as well.

Sir, you are required to engage in a conscientious  
investigation on all possible grounds of my appeal and brief  
all arguable issues in my brief before trying to withdraw.  
see Anders, 386 U.S. at 774.

RECEIVED

AUG 16 2013

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The U.S. Supreme Court held: ("the Constitutional requirement of substantial equality and fair process can only be attained where you act in the role of an active advocate in my behalf, as opposed to that of amicus curiae "Id. see Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) ("The appropriate scope of review of this Court is that "any evidence" of probative value is sufficient to uphold the PCR Judge's findings").

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Simply Stated, Appellant's are entitled to his one fair bite of the apple see Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d-581, 582 (2002).

Sir, your failure to argue all of my relevant issues prejudiced me from having all my issues presented for Appellate review. I am entitled to a full and fair opportunity to present valid claims in one PCR Application Edem v. State, 373 S.C. 256, 261; 523 S.E.2d 753, 755 (1999).

Also, pursuant to the rules and statutes governing PCR proceedings, I am entitled to a full adjudication on the merits of PCR Action 2013-CP-02-62776 filed December 9, 2011, because this action was not successive because the issues of:

- 1) Trial Counsel's Trial Court inexperienced to hold Jury Trial;
- 2) T. C. "Failing to Conduct Investigation";
- 3) T. C. Lying to PCR Judge February 2, 2009;
- 4) T. C. violating her own Client's Federal IADAA Contract i.e. Illegal continuance filed by Trial Counsel;
- 5) Failure to convey (2) plea Agreements;
- 6) Failure to impeach State's witnesses for Perjury;
- 7) Prosecutorial Misconduct Biggio v. U.S. Perjury;

8) Ineffective Assistance of PCR Counsel;

9) Ineffective assistance of PCR Counsel on Collateral Appeal; Martinez v. Ryan, (2012); Bailey v. State (2011).

10) Unlawful enhancement of Sentence (WOP)

These issues were not addressed nor ruled upon in Appellant's previous PCR, because Appellant's first PCR action occurred prior to December 9, 2011, thus, these issues constitute new grounds therein removing the present collateral action from classification of a successive action see Alice v. State, 305 S.C. 488, 409 S.E.2d 392 (1991).

Also pursuant to Martinez v. Ryan, 132 S.Ct. 1309 (2012)

Justice Kennedy held that:

1) inadequate assistance of counsel at initial-review - Collateral Proceedings may establish cause for a prisoner's Procedural default of a claim of ineffective Assistance of Trial Counsel;

2) Anti-terrorism and Effective Death Penalty Act (AEDPA) did not bar petitioner/Appellant from using ineffectiveness of his Post-Conviction Relief Attorney to establish "Cause" for his Procedural default; and: Also Counts for Direct Appeal as well

3) A remand was required to determine whether Appellant's attorney in his first State Collateral proceeding was ineffective, whether underlying ineffective Assistance of Trial Counsel claim was substantial, and whether Appellant was prejudiced (Reverse and Remand)

Also material facts arrived out of a After-Discovered Motion for Production of Documents and things from Trial Counsel dated October 12, 2011.

If you would look back in Appellants procedural history see Anderson and Johnson Briefs you will see that Appellants case has never been affirmed but ruled as no precedential value and because the WOP issue was not objected to see State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (Cr. App. 2007) Trial Counsel "erred" failing to preserve issue for Appellate review violated due process at sentencing under the Sixth and Fourteenth Amendments to the United States Constitution and Article I § 14 of the S.C. State Constitution these issues are without merit because of Ineffective Assistance of Trial Counsel. Even though the Appellant has been filing his own Pro-Se Briefs to show cause.

For a long time, I always believed that the State violated my I.A.O.A Contract from Federal Prison, but at PRK I know ~~now~~ it was my own Trial Counsel she became a friend to the State, and lied to the PR Judge.

Also that Giglio v. U.S. after-discovered evidence was relevant, because to falsely convict someone on perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the Judge and Jurys judgement see Simpson v. Moore, 627 S.E.2d - 701 S.E. (2006); Giglio v. U.S., 92 S.Ct. 763 (1972); State v. Whisonant, 335 S.C. 148, 515 S.E.2d 768 (Cr. App. 1999); State v. Schmidt, 342 S.C. 2d 401 (1986) See Linda Browns Testimony "Opening remarks" Closing - Arguments and Mr. Browns Conversation with the Trial Court.

This alone was prejudicial extraneous evidence that influenced the Jury, see U.S. v. Lentz, 383 F.3d 191, 221 (4th Cir. 2004) and a New trial is required. Also made Trial Court offended.

The Respondents were in error of law on the limitations issue. This S.C.R. Crim. P. Rule 29(b) motions places NO time limitations on a Motion for New Trial based on After-Discovered Evidence see State v. Spann, 513 S.E.2d 98, 100 (S.C. 1999); - State v. Hinson, 361 S.E.2d 120, 121-22 (S.C. 1987).

And these issues fall under the Discovery Rule see - Coats v. State, 575 S.C.2d 557 (S.C. 2003).

Therefore, the Appellant would respectfully move his appointed Appellate Counsel to Amend all his Relevant issues to the record pursuant to Rule 29(b) S.C.R. Crim. P. because ~~there is no~~ there is no Statute of Limitations to a Rule 29(b) and Appellant is entitled to a New Trial based on Newly - After-Discovered evidence supported by and through material facts. Also under Rule 401 S.C.R.E. Article IV State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991); - State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986) the Giglio Prosecutorial Misconduct Issue See Linda Brown is also relevant and requires reversal of conviction Citing Jackson v. Virginia, (1979). All of Appellant's issues are relevant with material facts to support action.

EXHIBITS ~~XXXXXXXXXX~~  
Dec. 20, 2012;  
April 8, 2013;  
April 26, 2013;  
May 13, 2013

Respectfully Submitted  
Noel E. Gray Jr.  
Appellant.

Columbia, SC.  
S.C. 8-12-13

Also citing Basley v. State, 392 -  
S.C. 442, 709 S.E.2d 671 (2011) Strickland  
Appellants 6th Amend right to effective  
Asst. of Appellate Counsel on initial Appeal.  
see Martinez v. Ryan, Supra.

CERTIFICATE OF SERVICE

The petitioner hereby certifies that a True Copy of  
petitioners letter to include all relevant issues has been placed  
in the U.S. Mail postage Pre-Paid and mailed to the following  
parties: ~~with Attached Exhibits A-F-2, and Personal Affidavit  
Supporting Motion for 29(b) Rule S.C.R. Crim P.~~

1. Honorable Clerk of Court

SC. Court of Appeals

P.O. Box 11629

Columbia, SC, 29211

2. SC. Commission of Appellate Defense

MR. Robert M. Pechak

P.O. Box 11589

Columbia, SC, 29211-1589

ee EXHIBITS ENCLOSED TO SUPPORT  
CORRESPONDENCE TO ADDRESS  
ALL ISSUES ss

Also, there is NO limitations  
on Rule 29(b).

3. Ms. Selley C. Elliot

Senior Asst. Deputy Atty. General

P.O. Box 11549

Columbia, SC, 29211

Subscribed and sworn to before me

this 10th day of August, 2013

by Judith A. Frye ys

NOTARY PUBLIC FOR STATE OF CAROLINA

My Commission Expires \_\_\_\_\_ My Commission Expires  
March 5, 2018

Respectfully Submitted

Noel E. Gray Jr #307590

Noel E. Gray Jr.

Petitioner

EXHIBITS AS FOLLOWS:

- A) Official Complaint
- B) News Paper Article
- C) Notice of Intent to Appeal
- D) Official Letter Head Denied Motion's for  
29(b) Rule of Civ. Proc. for South Carolina
- E) Official Judgement

DEC 20 2012

Noel Gray # 302590  
Murray # 212-B  
Broad River Conv Inst.  
4460 Broad River Rd.  
Columbia, S.C. 29210

December 20, 2012

Dear Honorable Clerk / Appellate Defense

Please find enclosed a true copy of defendant's / Permons  
Official Complaint against the Honorable Doyet A. Early III.

Procedural History will clearly show that the Honorable  
Early's denial of defendant's Rule 29(b) Motion for new Trial  
and Appointment of Counsel was Fundamentally Unfair; Bias  
and Abuse of Discretion and law and as well as prejudice against  
an indigent defendant.

Pursuant to Rule 29(b) of the S.C. R. Crim. P. I met  
the burden of proof through Material facts and clearly proven  
that the defendant in this action lost all State and Federal  
Procedures because of Trial Counsel Kelly P. Brown Esq.; Eleanore Duff  
Cleary; Bradley L. Boni and Wanda H. Carter. Because of State v. Rice;  
375 S.C. 302, 652 S.E. 2d 409 (Ct. App. 2007) Because Trial Counsel failed  
to preserve any and all Constitutional Violations for Appellate Review.

Also, the defendant's 1st P.C.R. was fundamentally unfair  
because Counsel failed to provide adequate Representation to preserve  
all his clients Issues for Federal Review pursuant to Strickland v. -  
washington, (1984); State v. Spreitz, 202 Ariz. 1, 3, 39 P.3d 525, 527  
(2002); S.C. Rule Civ. Proc. 71.1(d) (2011); Anders v. California; (1967);  
Brady v. Maryland, (1963); Pennsylvania v. Finley; (1971);

EXHIBIT B-1

and last, the cause for Procedural Default is caused by Appointed State Counsel Bradley L. Boni Esq. who failed to Amend defendants Rule 59(e) of South Carolina's Rules of Civil Procedure according to Defendants request pursuant to Rule 71.1(d) (2011) Martinez v. Ryan (2012) If Counsel in PCR dated February 2, 2009 filed for Discovery according to Rule 5 Brady v. Maryland (1963) and researched Prior Conviction In context with the Direct Appeals Court and Defendants Federal Interstate Agreement on Detainers Act Contract and the Illegal Order of Continuance filed by Trial Counsel Kelly P. Brown Esq. October 29, 2004 All the defendants Issues would not have been procedurally Defaulted and his issues in light of his Pro-se Briefs filed in Anders and Johnson Petitions would have been successful and the defendant would not have been Sentenced to LWOP pursuant to S.C. Code Ann § 17-25-45 Recidivist Statute. and his counsel would have uncovered the two (2) Plea Agreements that were found in Newly discovered evidence package dated October 12, 2011. And Prosecutorial Misconduct Package Pursuant to Giglio v. U.S. S.Ct. (1972) in Regards to Lindy Browns Unconstitutional testimony that unlawfully convicted defendant in clear violation of defendants 6th and 14th amendments of the United States Constitution. And a successive and unlawful Sentence of LWOP in violation of the 8th Amendment to Cruel and Unusual Punishment. If I need to send you any thing regarding this case please let me know. I'm a layman of the law.

sworn and Subscribed before me

the 20th day of December, 2012

x Susan A. Frye

Notary Public for South Carolina

My Commission Expires  
March 5, 2018

my commission Expires \_\_\_\_\_

cc/FILE

Respectfully Submitted

Noel Gray #307590

Noel Gray #307590

EXHIBIT B-2

April 8, 2013

Dear Mr. Pochak,

Hello Sir. My name is Noel Gray Appeal NO: 2012 - 213607. Sir, the pro-se brief I sent you is all of my issues raised in my Rule 29(b) Motion For New Trial.

Also I presented Material Facts to the Honorable to support the Motion. I sent you that brief so in case you file an Anders Brief, You will have that brief before your filing to preserve all those vital issues " such as follows " Motion's for Directed Verdict and New Trial that was preserved for Appellate Review. That Prior Appellate Attorney Eleanore Duffy Cleary Failed to address a reversible Issue alone; also that Griffin v. U.S. where the judge heard those people admit to lying and Trial Counsel's failure to object to that Unlawful LWOP Sentence. The Honorable is supposed to protect me from prosecutorial Misconduct as well as my trial Counsel. But failed to do so. The Honorable did in fact violate my Procedural Due Process " see Dr. Benedetto v. Honorable Judge and Linda Brown clear violation of the 6th and 14th Amendments to the United States Constitution. Petitioner should be Granted a New Trial Thank you Sir for your time. God Bless you.

Respectfully Submitted.

Noel C. Gray

#F307540

B.R.C.Z. Murray #212B

Sworn and Subscribed before me

this 5th day of April, 2013

x Jordan H. Dyer

Notary Public for South Carolina.

My Commission Expires: \_\_\_\_\_

EXHIBIT D

P.S. The Appellant respectfully Request's for a copy of his Court transcripts to aid in future proceedings. Thank you, Sir.

CC/FILE



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

April 26, 2013

Mr. Noel Gray, #307590  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

Re: Your case

Dear Mr. Gray:

The appeal of the denial of your Rule 29(b) motion is limited to the issue of whether trial counsel failed to convey two plea agreement offers to you. The January 31 – February 2, 2005, trial transcripts are not relevant to that issue. You have already been provided those transcripts in the past. This office can not afford to send duplicate transcripts. Neither can we afford to duplicate the other documents you request. Our office does not make Rule 5 on Brady discovery requests as we just handle the appeal.

Sincerely,

Robert M. Pachak  
Appellate Defender

RMP/pcm

EXHIBIT E

NOEL E. GRAY, JR #307590

MURRAY # 212 B

BROAD RIVER CORR. INST.

4460 BROAD RIVER RD.

COLUMBIA, SC. 29210

MAY 13, 2013

MR. ROBERT M. PACHAK ESQ.  
DIVISION OF APPELLATE DEFENSE  
P.O. Box 11589  
COLUMBIA, SC. 29211-1589

Re: OTHER VITAL ISSUES PRESERVED

Dear Mr. Pachak,

Hello Sir, I want to thank you sir for what you are doing in my case. But I have a Constitutional question to ask.

In my Rule 29(b) motion I filed other-vital issues

Infra:

Prosecutorial Misconduct pursuant to Giglio v. US; Vandetta; Rogers Violations; Brady violations; Trial Court Abuse of Discretion of facts and laws; Unlawful denial of Directed Verdict Motion's that were preserved for Appellate Review etc.

EXHIBIT F-1

These issues raised were relevant to the facts and were supported by and through material facts.

Sir, will these issues be preserved in this Hearing with Appointed Counsel?

Thank you Sir

Respectfully Submitted

Noel E Gray Jr. #307540

Noel E Gray Jr. #307550

Murray #2128

Sworn and Subscribed before me  
this 13 day of May, 2013  
by Eugene King  
Notary Public for South Carolina  
my commission Expires: April 4, 2016

EXHIBIT F.2