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JUL 26 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

Eugene C. Griffith Jr Judge

York County,

Affidavit And

Motion For Substitution
of Parties

Ben Robert Stewart,

Petitioner

v.

State of South Carolina,

Respondent

Appellate Case No: 2023-001478

Ben Robert Stewart
990 Wisacky Highway
Bishopville, S.C. 29010

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AFFIDAVIT; AND MOTION FOR SUBSTITUTION
OF PARTIES

I, Ben Robert Stewart, 223006 certify that the foregoing is true and correct upon belief and knowledge and aver the following:

This Honorable Court has jurisdiction pursuant to Rule 243 SCACR and the I am the Petitioner hereafter and request this Honorable Court to take Judicial notice that substitution of parties pursuant to Rule 265 SCACR is being sought in attempt to receive the Respondents, Return pursuant to 243 Section (g) within thirty (30) days, further is should be noted that: Pursuant to Rule 264 (a) continued representation by Ola A. Johnson Esquire, who represented this instant PCR Action, Mr. Johnson illegitimately forwarded this appeal to the indigent defense where a conflict of interest and

Motion for outside counsel was filed and denied by this Honorable Court, January of 2024, Attorney Sarah E. Shipe was appointed and filed an Writ of Certiorari with this Honorable Court on June 3, 2024 raising only one (1) claim, neglecting to cite or correct the State and PCR attorneys misconduct and mishaps and procedural errors and Petitioner request to Relieve Attorney Shipe and Vacate or Remand for default on June 21, 2024, Request a Petition for leave To make a Motion, Rule 60 (b) June 24, 2024, and filed a Subpoena Duces Tecum June 27, 2024. It should be noted that Attorney Sarah E. Shipe, was cited at the Disciplinary Counsel June 28, 2024 see; Exhibit CA.

at pg (1) where Ms. Shipe is cited for 1.1. SCACR Rule 407 conflict of interest and misconduct etc. Pursuant to Rule 265 SCACR section (c) the

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Petitioner is requesting this Honorable Court to order the Respondent upon this motion to file the Return in accordance with applicable rules of Court and if there has been a Return based on the pleadings herein stated order Respondent to serve its Return to Petitioner because good cause is shown as to relieving counsel and its in the interest of Justice. see; *Simmons v. State*, 416 S.C. 584, 788 S.E.2d 220 (2016) held that extraordinary action of remanding application for Post conviction relief based on unpreserved error was warranted, on Writ of Certiorari, where misrepresented the strength of the DNA evidence, same circumstances here, although including a misapplied controlling law see; *Kemp v. U.S.*, 596 U.S. 528 (2022) *Simmons supra*; stated: "We conclude the compelling

nature of the dispute and the interest of justice warrant the "extraordinary action" of remanding the case to the PCR court for issuance of a proper order, quoting *Pruitt v. State*, 310 S.C. 254, 423 S.E.2d 127 (1992) held that order denying post conviction relief improperly failed to address allegation raised in application for post conviction relief, same circumstances in this instant case; see; also *Fishburn v. State*, 427 S.C. 505, 832, S.E.2d 584 (2019) quoting (17-27-80) S.C. code ann; see *Kneece v. State*, 269 S.C. 177, 236 S.E.2d 746 (1977) held failure to file an answer to post conviction petition within extended time granted by court did not require granting of relief request, absent showing of prejudice to petitioner from the delay.

In this instant case the Petitioner has filed an VERIFIED COMPLAINT FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION AND REQUEST FOR EXPEDITED REVIEW as Exhibit #9 in (2015) also; an NOTICE AFFIDAVIT

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AND MOTION FOR EXPEDITED PCR IN (2016) as Exhibit # 7 and Applicants Return to Conditional Motion to Dismiss (2014) as Exhibit #10, including Exhibit #1 PCR Application and Exhibit #2 Memorandum of Law in Support of PCR filed (2013) and Respondent failed to answer the PCR claims/issues raised and therefore defaulted, waived, and or forfeited the argument for the State, see; 55 (e) SCRPC and the important and relevant part states: "No judgment by default shall be entered against the State of South Carolina or officer or agency thereof" ... unless the claimant establishes his claim to relief by evidence satisfactory to the Court". Accordingly, the warnings, of the availability of the vital witness Val Hudson was ignored see; Memo of Law at 32-33 as Exhibit #2. also; Val Hudson Affidavit filed Dec. 9, 2013, and irreparably in (2019) Petitioner lost this witness see; Exhibit B-12, Lawanda Val Hudson obituary July 12, 2019, which denied a right to a speedy trial and prejudice is obvious in

a ten plus year delay see *Barker v. Wingo*,
Kneec v. State, supra, indeed the State has waived
defaulted, and or forfeited this appeal and denied
and deprived South Carolina Constitutions Article 1 Sec.
3; Article 1 Sec. 9; Article 1 Sec 14. and the
United States Constitutions Sixth and Fourteenth Amendment,
indeed and such relief rest because there is a
Eighth Amendment violation and should bar-reprosecution.

According to the facts and citation presented the Petitioner
cites; *Palmetto Construction Group, LLC v. Restoration
Specialist, LLC*, 428 S.C. 261, 834 S.E.2d 204 (2019);
Mitchell v. BMW Manuf. Co., LLC, (2020 WL 6587068) (United)
(States District South Carolina, Spartanburg Division Aug. 5, 2020));
Stokes v. Stirling, 64 F.4th 131 (4th Cir 2023)).

WHEREFORE, the Petitioner request that in the interest of
justice, the Respondent files its return on this Court to
declare in favor of Petitioner, to the address provided

in accordance of the Rules and Statutes and or Order that a waiver, default, and or forfeited by the State has occurred, and remand with instructions to Order a vacate judgment and conviction.

Or, Order Vacate judgment and Conviction under the Barker v. Wingo, holding because of the intentional delay; and warnings of the availability of a vital witness was ignored; request for expedited hearing citing Barker supra; prejudice in lost of witness; resulting in the State failing to properly file order of dismissal pursuant to 71.1(f); Rule 9(b) classified; misapplied controlling law; Kemp, supra; and Petitioner therefore, "established his claim to relief by evidence satisfactory to the Court" see; 55(e) SCRCP, respectively

This 15th day of July 2024

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~~THE SOUTH~~ CAROLINA
SUPREME COURT

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