

Ben Robert Stewart, 223006
990 Wisacky Highway
Bishopville, S.C. 29010

RECEIVED

JUL 31 2024

S.C. SUPREME COURT

July 25, 2024

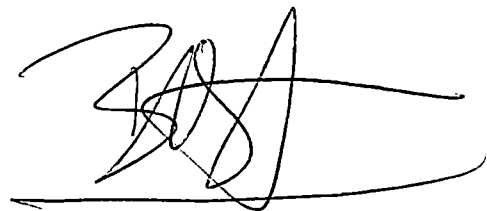
Please forward, Court of Administration this filing

Please compare^① Exhibit B 13 Letter from
Ola Johnson Esquire, dated Sep. 24, 2023

Motion To Relieve Counsel filed July 3, 2024
② Exhibit # 24 Affidavit,

③ Exhibit B 17 Letter
From Angie Bryant Clerk of Court dated July 19, 2024

Please correct these findings by Clerk Angie Bryant.
Thank you for your time!



B-13

**OLA JOHNSON
ATTORNEY AT LAW**

Mailing Address:

Box 549
Lexington, SC
29071

Office Address: P.O.

201 West Main St.
Suite G
Lexington, SC
29072

e-mail: olajohnsonlaw@gmail.com

Telephone: (803) 360-8692

Fax: (803)-994-8279

9/24/23

STEWART, BEN ROBERT (00223006)

F3B-1228-B

LEE CORRECTIONAL

990 Wisacky Highway

Bishopville, SC 29010

RE: PCR

I have enclosed a copy of my proposed order and the Order of Dismissal and the Notice of Appeal in your case. This completes my representation on your case. The Office of Appellate Defense has been notified of your appeal and they will represent you. I sent them the AG's package to assist them in your representation. You are also free to hire counsel to represent you on the appeal. Thank you.

Ola Johnson



EXH B-17

CLERK OF COURT'S OFFICE

Post Office Box 649, York, South Carolina 29745-0649

Date: 7/19/2024 9:05:06 AM
TO: Ben Robert Stewart
FROM: Angie Bryant, YORK COUNTY CLERK OF COURT
RE: PCR /2013CP4603731

The above referenced document is being returned for the following reason(s):

1. Requires address, phone number if filing Pro Se.
2. Not dated
3. Not signed
4. Not notarized
5. Incorrect filing fee, Correct amount due: ___
6. Requires original signature
7. Requires a Civil Action Cover Sheet
8. Requires Civil Action Cover Sheet filled out in its entirety
(state nature of action, Jury/Nonjury, Signed by attorney/pro-se)
9. Requires a Motion Cover Sheet
10. Requires a Motion Cover Sheet & \$25
11. This is not a York County Common Pleas Case
12. Check/money order must be payable to Clerk of Court
13. Document is a copy, must file original signature
14. Judge denied Motion to Proceed in Forma Pauperis
Original lawsuit is being returned to you and if you wish to pursue you will need to pay the \$150.00 filing fee.
15. Other

Mr. Stewart, Your documents are being returned to you because you are actively represented by attorney Ola Johnson, all court files must come to us from your attorney.
Thank you,
Common Pleas
Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF York

Ben Robert Stewart 223006

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

Submitted By: Ben Robert Stewart
Address: 990 Wisacky Hwy, Bishopville, SC
29010

SC Bar #:
Telephone #:
Fax #:
Other:
E-mail:

CIVIL ACTION COVERSHEET

2013 -CP- 46 - 3731

FILED RECEIVED

2024 JUL -3

2024 JUL -3 PM 1:54

CERTIFIED TRUE COPY

YORK COUNTY

CLERK OF COURT

2024 JUL -3

FILED RECEIVED

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete.

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Contracts
<input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Fraud/Bad Faith (150)
<input type="checkbox"/> Failure to Deliver/Warranty (160)
<input type="checkbox"/> Employment Discrim (170)
<input type="checkbox"/> Employment (180)
<input checked="" type="checkbox"/> Other (199) <u>55 e motion</u> | <input type="checkbox"/> Torts - Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
<input type="checkbox"/> Previous Notice of Intent Case #
<u>20 -NI-</u>
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) | <input type="checkbox"/> Torts - Personal Injury
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Assault/Battery (370)
<input type="checkbox"/> Slander/Libel (380)
<input type="checkbox"/> Other (399) | <input type="checkbox"/> Real Property
<input type="checkbox"/> Eminent Domain (400)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) |
| <input type="checkbox"/> Inmate Petitions
<input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | <input type="checkbox"/> Administrative Law/Relief
<input type="checkbox"/> Reinstate Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Retition (840)
<input type="checkbox"/> Forfeiture-Consent Order (850)
<input type="checkbox"/> Other (899) | <input type="checkbox"/> Judgments/Settlements
<input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)
<input type="checkbox"/> Other (799) | <input type="checkbox"/> Appeals
<input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Comm. (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) |
| <input type="checkbox"/> Special/Complex/Other
<input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input type="checkbox"/> Other (699)
<input type="checkbox"/> Sexual Predator (510)
<input type="checkbox"/> Permanent Restraining Order (680) | <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Out-of-State Depositions (650)
<input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)
<input type="checkbox"/> Pre-Suit Discovery (670) | | |

Submitting Party Signature: [Signature]

Date: 6/28/24

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Exhibit #24

STATE OF SOUTH CAROLINA
County of York,

Court of Common Pleas

Ben Robert Stewart

Case No: 2013-CP-463731

Appellate Case No:

v.

State of South Carolina

Affidavit;
Motion For Default And
Cause for Dismissal
Rule 55(e) SCRPC, Rule 55

CERTIFIED TRUE COPY
2014 JUL -3 PM 12:59
ANGIE M. BRYANT
CLERK OF COURT
YORK COUNTY, SC

The Petitioner Ben Robert Stewart, 223006 filing pro se
this petition for, the Honorable Court, as Motion
for Default And Cause for Dismissal Rule 55e
SCRPC regarding a post conviction relief Case No:
2013-CP-46-3731, whereas the State has default
the appeal, post conviction relief matter and any
argument or grounds herein contained where;

- 1) The State's Return, does not cite the applicable law and standard of review nor does it argue against any of the Petitioner's claims. filed March 2014 see Exh # 6 attached
- 2) The States Amended Return, does not cite the applicable law and standard of review nor does it

STATE OF SOUTH CAROLINA

COUNTY OF York

Ben Robert Stewart 223006

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

Submitted By: Ben Robert Stewart
Address: 990 Wisacky Hwy, Bishopville, SC
29010

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

CIVIL ACTION COVERSHEET

2013 -CP- 46 - 3731

FILED

2024 JUL -3

12:54

CERTIFIED TRUE COPY

2024 JUL -3 PM 1:00

YORK COUNTY

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete.

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached).

NATURE OF ACTION (Check One Box Below)

Contracts

- Constructions (100)
- Debt Collection (110)
- General (130)
- Breach of Contract (140)
- Fraud/Bad Faith (150)
- Failure to Deliver/Warranty (160)

- Employment Discrim (170)
- Employment (180)

Other (199) 55 e motion

Torts - Professional Malpractice

- Dental Malpractice (200)
- Legal Malpractice (210)
- Medical Malpractice (220)
- Previous Notice of Intent Case # 20 -NI-
- Notice/ File Med Mal (230)
- Other (299)

Torts - Personal Injury

- Conversion (310)
- Motor Vehicle Accident (320)
- Premises Liability (330)
- Products Liability (340)
- Personal Injury (350)
- Wrongful Death (360)
- Assault/Battery (370)
- Slander/Libel (380)
- Other (399)

- Real Property
- Landlord/Tenant (400)
- Eviction (410)
- Surety (420)
- Mechanic's Lien (430)
- Partition (440)
- Possession (450)
- Building Code Violation (460)
- Other (499)

Inmate Petitions

- PCR (500)
- Mandamus (520)
- Habeas Corpus (530)
- Other (599)

Administrative Law/Relief

- Reinstate Dr. License (800)
- Judicial Review (810)
- Relief (820)
- Permanent Injunction (830)
- Forfeiture-Petition (840)
- Forfeiture-Consent Order (850)
- Other (899)

Judgments/Settlements

- Death Settlement (700)
- Foreign Judgment (710)
- Magistrate's Judgment (720)
- Minor Settlement (730)
- Transcript Judgment (740)
- Lis Pendens (750)
- Transfer of Structured Settlement Payment Rights Application (760)
- Confession of Judgment (770)
- Petition for Workers Compensation Settlement Approval (780)
- Other (799)

Appeals

- Arbitration (900)
- Magistrate-Civil (910)
- Magistrate-Criminal (920)
- Municipal (930)
- Probate Court (940)
- SCDOT (950)
- Worker's Comp (960)
- Zoning Board (970)
- Public Service Comm. (990)
- Employment Security Comm (991)
- Other (999)

Special/Complex/Other

- Environmental (600)
- Automobile Arb. (610)
- Medical (620)
- Other (699)
- Sexual Predator (510)
- Permanent Restraining Order (680)
- Pharmaceuticals (630)
- Unfair Trade Practices (640)
- Out-of-State Depositions (650)
- Motion to Quash Subpoena in an Out-of-County Action (660)
- Pre-Suit Discovery (670)

Submitting Party Signature: [Signature]

Date: 6/28/24

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Exhibit
#24.

STATE OF SOUTH CAROLINA
County of York,

Court of Common Pleas

Ben Robert Stewart

Case No: 2013-CP-463731

Appellate Case N:

v.

State of South Carolina,

Affidavit;
Motion For Default And
Cause For Dismissal
Rule 55(e) SCRPC, Rule

ANGELIA BRYANT
CLERK OF COURT
YORK COUNTY, SC

2014 JUL -3 PM 12:59

CERTIFIED TRUE COPY

The Petitioner Ben Robert Stewart, 223006 filing p
this petition for, the Honorable Court, as Motion
for Default And Cause for Dismissal Rule 55e
SCRPC regarding a post conviction relief Case No:
2013-CP-46-3731, whereas the State has default
the appeal, post conviction relief matter and any
argument or grounds herein contained where;

- 1) The State's Return, does not cite the applicable law and standard of review nor does it argue against any of the Petitioner's claims. filed March 2014
see Exh #6 attached
- 2) The States Amended Return, does not cite the applicable law and standard of review nor does it

Exhibit # 24.

IN THE STATE OF SOUTH CAROLINA
County of York

Ben Robert Stewart, 223006

v.

State of South Carolina.

In Court of Common Pleas

Civil No:

2013-CP-46-

3731

Affidavit
Motion To Retrieve Counsel

CERTIFIED TRUE COPY
2014 JUL -3 PM 12:59
ANGIE M. BRYANT
CLERK OF COURT
YORK COUNTY, SC

Ben Robert Stewart

223006

990 Wisacley Hwy

Bishopville S.C. 29010

Ex 3
24

Affidavit, Motion To Retrieve Counsel

I, Ben Robert Stewart, certify that the foregoing is true and correct. Ben Robert Stewart 223006 hereafter Petitioner files an affidavit, motion to retrieve counsel with this Honorable Court because the attorney of record is no longer representing Petitioner, Ala A. Johnson and Petitioner has Request the Supreme Court of South Carolina to Retrieve Sarah E. Shipe as well.

1. The Petitioner seeks to file two Motions with this Honorable Court and Both defense counsel mishaps, ineffective, misconduct, and breakdown in communication has prejudice Petitioner's case. Mr. Johnson has not filed a mandated 59 Motion nor did Appellate PCR Attorney correct these errors.

2. The Petitioner is enclosing two motions (1) Rule 55 Motion; (2) Rule 60 (b) Motion, including Table of EXHIBITS A (6 total) Table of Exhibits B (25 total) Table of Exh. C (22 total) Master Number Exh (23 total)

6/24

3. In the interest of Justice, the Petitioner is requesting this Clerk to forward to Judge Eugene C. Griffith Jr. to forward due process and Equal protection of the Laws.

Also; Declaration of facts to Applicable Law
And Standard of Review.

I, Ben Robert Stewart certify that the Rule 55 and Rule 60 (b) is a true original, except the Applicable Law and Standard of Review; which is a copy because the original was destroyed; in the Rule 60 (b) motion Please accept and file and Clerk Stamp and Return

cc/

~~Ben Robert Stewart~~
Ben Robert Stewart
223006
998 Wisackey Hwy
Bishopville S.C 29010

Exh #
24.

STATE OF SOUTH CAROLINA
County of York,
Ben Robert Stewart,

Court of Common Pleas

Case No: 2013-CP-46-3731

v.
State of South Carolina,

Affidavit; Motion To Jurisdiction
And Venue; Amend Pleading

The Petitioner, Ben Robert Stewart, filing pro se; in forma pauperis hereafter, Petitioner, certify that the foregoing is true and correct upon the best of knowledge and swear or affirm that:

I am the Petitioner in case No 2013-CP-46-3731 in York County South Carolina, and I am pro se and I filed a Affidavit, Motion For Default And Cause For Dismissal pursuant to Rule 55(e) SCRPC on June 24, 2024; certified true copy July 3, 2024 including 75 exhibits; Affidavit and Declarations of Facts for Exhibit dated June 28, 2024, Motion To Relieve Counsel; and

Motion To Proceed In forma Pauperis,

The Petitioner, respectfully request this Court to take judicial notice at () factors in making a decision regarding jurisdiction whereas, the pleading I filed is not filed with the York County, Clerks office or the Petitioner may be mistaken because the table of Exhibits are not filed or Clock stamped; nor Is the Covers provided which appears to be stamped "certified true copy". Again, if there is a mistake, Petitioner is requesting to be provided with the file Received clock stamp return.

Furthermore, pursuant to Rule 82 SCRPC (a), (b), (c), the Petitioner respectfully request that if there is an jurisdictional issue which the Rule 82 covers Petitioner also amends the 55 (e) pleading to Federal Rule 55 and therefore if the State elects to object to the pleadings jurisdiction this action is properly transferred or if the Clerk believes of defects there is proper remedy requested in the interest of justice.

Please take judicial note that Petitioner alleged that 71.1 (f) is indeed violated in this instant case.

In attempt to correct these among other mishaps Petitioner contacted All parties contained in Exh_____ Exh_____ Exh_____ and Exh_____ in which, the Attorney General office negated to respond including the defense attorneys. Exhibits filed, June 24, 2024

The Petitioner is also filing a Rule 9 Pleading which does not need to be on notice however in good faith including averments made in prior pleadings Petitioner request that it be noted.

The Petitioner again files this Affidavit; Motion To Jurisdiction And Venue; Amend Pleading to conform to the Rules of Court, in the interest of Justice and Due Process of Law.

WHEREFORE) the Petitioner prays that jurisdiction is set and if not this pleading is enforced, and or included the Amended Rule regardless and to notify Petitioner of status and provide clock stamp filed Received copies.

Dated this _____ on _____

3 of 4

~~Ben Robert Stewart~~
Ben Robert Stewart 223006
990 Wisacky Highway
Bishopville S.C. 29010

EX #
44
24.

STATE OF SOUTH CAROLINA
County of York,

Court of Common Pleas

Ben Robert Stewart

Case No: 2013-CP-463731

Appellate Case N:

v.
State of South Carolina

APPIDAVIT;
Motion For Default And
Cause For Dismissal
Rule 55(e) SCRPC, Rule 55(a)

The Petitioner Ben Robert Stewart, 223006 filing pro se
this petition for, the Honorable Court, as Motion
for Default And Cause for Dismissal Rule 55e
SCRPC regarding a post conviction relief Case No:
2013-CP-46-3731, whereas the State has default
the appeal, post conviction relief matter and any
argument or grounds herein contained where;

1) The State's Return, does not cite the applicable
law and standard of review nor does it argue against
any of the Petitioner's claims. filed _____

2) The States Amended Return, does not cite the
applicable law and standard of review nor does it

argue against any of the Petitioner's claims
filed

3) The State's Order of Dismissal, does not cite the applicable law and Standard of review nor does it argue against any of the Petitioner's claims. Thus, rendering and classified as a unreasonable application of clearly established Federal law, see 28 USCA, 2254 also see; 17-27-70 s.c. code ann; the replies were not according to statute also see; 17-27-80 s.c. code ann. the order, final Judgment were not according to statute for two reasons (1) the Petitioner's, PCR Applications, Memorandum of law in Support, Two Amended Petitions and Exhibits were not responded to whereas Petitioner "is the master of his complaint" see; Steves and Sons, Inc v. JELD-WED, Inc, 988 F.3d 690 (4th Cir-2021), and 11.1 SCRPC, Post Conviction Relief Act, (a), s.c. code ann Section(s) 17-27-10 to 17-27-120 (1985) (c) independent Actin, (e) burden of proof, under 17-27-70 (b) in important and direct part state: "In light of the reply, or an default thereof," Also, see SCRPC, Rule 55(e), Judgment Against

the State and Certain Other Parties, it states:

"No judgment by default shall be entered against the State of South Carolina or an officer, or agency thereof, against minors, incompetents, or parties to a suit for divorce or annulment of marriage or against a party upon whom serves of summons was made by publication, and who did not subsequently make appearance in the actions, or in any in rem action, unless the claimant ~~the~~ establishes his claim to relief by evidence satisfactory to the Court."

- 4) The Petitioner has established his claims to relief by evidence satisfactory to the Court, and demonstrated that questions of law and fact existed requiring a hearing for Post convictions pursuant to statutes yet, the Order draft by the State was lone-argument without answering Petitioner's claims and citing against Petitioner's authorities.
- 5) The Petitioner further argue that issue (f) at Petitioner's PCR at pg _____ was totally waived by

by the state and not argued against, whereas the other claims were ruled on in violation of 17-27-80 S.C. Code Ann., see; Kemp v. U.S.

6) The State of South Carolina, In Palmetto Construction Group, LLC v. Restoration Specialist, LLC, 428 S.C. 261, 834 S.E. 2d 204 (2019) held (1) trial court's orders were interlocutory and not immediately appealable and (2) general contractor waived its rights to enforce arbitration clause,

The Court stated: "By defaulting, a defendant forfeits his rights to answer or otherwise plead to the complaint, In essence, the defaulting defendant has conceded liability," quoting Howard v. Holiday Inns, Inc., 271 S.C. 238, 242, 246 S.E. 2d 880, 882 (1978)

7) The South Carolina District Court, In, Mitchell v. BMW Manufacturing Co., LLC, (2022 WL 6587068) U.S. Dist Court Dist. S.C. Spartanburg Division Aug. 5, 2022) stating: "The Availability of Sanctions Less Drastic section." Holding a party in default and moving forward with default judgment is the ultimate sanction in that

the party forfeits its right to defend itself.

8) The Fourth Circuit Court, In, *Stokes v. Stirling*, 64 F.4th 131 (4th Cir 2023) held that State forfeited its appellate argument alleging that the decision is in *Shinn v. Ramirez*, 142 S.Ct. 1718 (2022) citing Section 2254 (e)(2) furthermore; PCR attorney failed to include or submit the trial transcript of Feb. , 2009 - Feb. , 2009, and therefore it is impossible that it went before the Honorable Eugene C. Griffith Jr, Judge and thus, rendering Judgment, pursuant to 17-27-80 s.c. code ann, Final Judgment violated is a under-statement more-over, Rule 59(e) was not filed by attorneys however, all the initial PCR issues are purposely defaulted undermining Petitioner and this Petition/ Motion for default should be granted.

9) The Petitioner's claim regarding Val Hudson, in PCR application at pg. —, dated Dec. 9, 2013, also, Petitioner warned the State a number of times that Val Hudson was sick and she could and would die, see, Memo of Law at pg. 32-33 —.

10) The Petitioner filed enclosed in this Petition (3) Motions Petitioner request for a expedited PCR, Exh #10 Applicants Return To Conditional Motion at 8 stating, Val Hudson is ailing and nearly incapacitated and could very well succumb to her ailments in the very near future". quoting Barker v. Wingo supra, (May 2014)

Exh #9 "VERIFIED COMPLAINT FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION AND REQUEST FOR EXPEDITED REVIEW" at 8 stating the states efforts to delay this matter is obvious and designed to prejudice Petitioner as my exculpatory witness Lawanda (Val) Hudson is gravely ill and could likely succumb if this matter continues to be purposely delayed by the State see; Herring v. State, 262 S.E. 597, 206 S.E.2d 885 (1974) Also; see S.C. Const, Art 1 § 3, Due Process and Equal Protection; S.C. Const Art, 1 § 9 Speedy Remedy. Filed June 2015)

Exh #7 "NOTICE, AFFIDAVIT AND MOTION FOR EXPEDITED PCR" at pg, 3 state; "That Lawanda Valerieen (Val) Hudson an exculpatory witness is in

failing health and if this matter continues to be delayed — even deliberately delayed — could cause Petitioner to lose this witness exculpatory, testimony, and fatally and irreparable prejudice Petitioner cause” (filed Jan 2016.)

11) The Order of Dismissal, also drafted by the State at pg 3 No. 5 and pg 4 No. 5 both refer to Val Hudson issues raised in this instant PCR, however No. 5 on pg 3 and No. 5 on pg 4 was ^{not} answered by the state and therefore, waived. see Rule 55 (e).

12) In *Kneece v. State*, 269 S.C. 177, 236 S.E.2d 746 (1972) held, (1) the failure to file an answer to postconviction petition within extended time granted by court did not require granting of relief requested, absent showing of prejudice to petitioner from the delay, citing *Herring v. State supra*,

13) The Petitioner cited, *Herring v. State supra*, in (2015) alerting the Courts of the potential lost of Val Hudson, and in (2019) the Petitioner

Lost Ms Hudson when she actually pass-
away, which was a six year delay in this
instant PCR action.

14) Exhibit A2 Val Hudson, Affidavit
was filed Dec. 9, 2013 with the original PCR
application, her testimony in the defense
attorney Mr. Snow in closing stating: "Val
certainly could have possibly cleared this
whole thing up" (Record on Appeal 1064 1096)

15) Exhibit A2 Val Hudson, Affidavit
at pg 1 states No.3 "I provide this affidavit
to tell the truth of what happened at my friend
Monday Bishop's place on the night in October,
2006, when Reed Allen, who had been partying
with us lied that Monday's brother Ben Stewart
gave him a gun in a bag to hide for him".
(Dated Feb, 22, 2013) also this was read into
the record at the PCR hearing at pg —

16) Exhibit B12 Lowanda Val Hudson, Obituary, dated July 12, 2019

17) Val Hudson Affidavit was read into the record yet the State failed to answer the issue, and therefore defaulted it.

18) These facts stated herein No(s) 1-18, demonstrated that, (1) the state failed to answer the mandated post conviction relief allegations by cited misapplied controlling law, Kemp supra, Fishburne pg (2) the trial transcript that's under review was not submitted or included into evidence, therefore, it is impossible that it went before the PCR Court and the drafter of the Order committed an error, and misstated facts; (3) the Order of dismissal violated Rule 17-27-80 s.c. code ann Final Judgment (4) No(1) "the Order of Dismissal also drafted by the state at pg 3, No. 5 and pg 4 No. 5, both refer to Val Hudson issues raised in this instant PCR, however, No. 5 on pg 3 and No. 5 on pg 4 was not answered by the state and therefore waived," see at pg (7) in this Affidavit herein.

19) According to Rule 55 (e) Judgment Against the State and Certain Other Parties, applicable in this instant case, "unless the claimant established his claim to relief by evidence satisfactory to the Court".

20) No. 15) herein, Exh A2 Val Hudson Affidavit at pg 1. where she states: "Reed Allen, who had been partying with us lied that Monday's brother Ben Stewart gave him a gun", was read into the Record at the PCR hearing at pg ~~20-22~~, and the issue was so strong that the State could and did not refute it respectively.

21) Petitioner not receiving relief on this instant PCR action only amounts to prejudice because the State played an unfair game and deprived S.C. Const. Art. 1 § 3. Equal Protection of the law, 11.1 SCRP 12-27-10 ~~at~~ ~~see~~, S.C. Const. Art 1 § 9 Speedy Remedy S.C. Const Art 1 § 14 fair trial, U.S. Constitution's Sixth Amendment right to speedy trial, (ten year delay) Fourteenth Amendment, Due process

Equal Protection of the laws in South Carolina, namely, Petition Clause, under the First amendment for redress of grievance; S.C. Const. Art. 1 § 2 Petition the government or any department thereof for a redress of a grievance of Constitutional rights stated herein violated for (15) years (2) months (105) days.

22) These violations of procedures, statutes, case laws, South Carolina Constitutional Provisions; and United States Constitutional Provisions; demonstrates that the State defaulted this instant PCR application, and or waived its challenge, and forfeit the opportunity to argue against Petitioner whereas, the Order drafter conceded yet undermined the Procedures in a delayed tactic resulting in irreparable lost in an essential witness Val Hudson rendering prejudice; *Barker v. Wingo, supra*, *Kneece v. State, supra*, citing SCRPC Rule 55(e).)

23) At the PCR hearing at York County on April 17, 2023, the Petitioner explained his case theory and outlined the supporting authorities:

Note,

Mr. Stewart: "Because -- you know, when I went to trial I was basically, you know, trying to tell my lawyer that, you know, they have me on psychiatric medication. It wasn't right. I didn't feel right. You know what I'm saying, I was taking -- I had took Remorod, I had took Remrad for two days. I didn't like it. I had took another anti-depressant and they finally put me on Prozac. So by the time I was going to trial I was taking Prozac and every time I don't take that, you know, I'm kind of relaxed. I can think a little. If I'm taking Prozac I kind of like zoom. I think too fast. I'm real irritable. I can't sit still. So I'm just basing on, you know, the precautions of the IAD which amounted to a fundamental miscarriage of Justice based on me getting convicted wrongfully and my errors along with me going to trial under psychiatric

medication. There's a case U.S. versus Damia. It's a 4th Circuit case where he even plead guilty where they said that it's reversible required based on him taking psychiatric medication and they said they would make his sentence stand but the conviction of him -- no, no, no, they would make his conviction reversed but his sentence will stand under the guilty plea, under Alford plea, and they noted that all mental illness that -- that all mental illness problems under Dusky (phonetics) versus United States any ambiguity (sic) regarding mental illness they will reverse based of ambiguity so --

THE COURT: Ambiguity.

MR. STEWART: Yes, sir. Excuse me.

THE COURT: That's okay.

MR. STEWART: That was my standing. I had argued it and I have been trying to argue it for the longest and I think I have standing under Dusky versus United States, Pate versus Robinson, Washington versus Harper, United States versus Bishop

" I have raised them in my direct appeal.
I have raised it as part of my IAD violation
because I believe it connects. I still
warn the court that I was mentally even
after we had this habeas corpus hearing
where I told them that, you know, I'm
mentally ill. They disregarded it. So I
believe that my lawyer was ineffective
under the standard of a case called
Nance versus Ozman where, you know,
they basically quoted United States versus
Croniz, where I think under the second
scenario where a lawyer -- where he said
that a lawyer broke down the adversary
process. Failed to challenge the prosecutor's
case to a meaningful adversary testing.

THE COURT: Okay, well, you've argued that.
You're protected on that issue.

MR. STEWART: Okay. That's all I was saying. I was
quoting everything combined and it still
fit under Nance as well. I just wanted it noted.

THE COURT: Okay. Your entire application and your
memorandum and the facts that you outlined

"that's in the packet right now, and it sits on my desk." see, PCR hearing, April 17, 2023 at pgs 101-103.

At the present time, Petitioner is experiencing a fair finger dilemma for any proper adjudication or analysis (1) the Order of Dismissal dated August 25, 2023, misapplied the controlling law, see; Kemp v. U.S., 596 U.S. 528, 142 S.Ct. 1856, 213 L.Ed.2d 90 (2022) to record facts, was cognizable as a motion for relief from judgment on ground of mistake, and thus, the motion was subject to a one year-limitations period," where, the Order did not cite Nance v. Ozmint supra, quoting U.S v. Cronin, supra, and Rule 71.1 (f), filing and Service of Order was violated because "The post conviction relief judge shall submit the signed final order or judgment to the Clerks for filing and the Clerk of Court shall provide notice of entry of Judgment and serve a copy of the order or judgment to the parties as provided in 77 (d), which was never done in this instant case see; Appendix at 1507; Exh #4 Order of Dismissal, with no clerk entry clock stamped received, respectively.

(2) Appellate PCR attorney, Sarah E. Shipe was cited for conflict of interest, and did not correct nor cite misconduct

reaffirming under Nance supra; Standards for PCR attorney Ola A. Johnson, for not filing a mandated 59 Motion and otherwise incorporated such locking standards under Nance, supra; herself and failed to demonstrate the circumstances in the Fishburn v. State, 427 S.C. 505, 832 S.E.2d 584 (2019) quoting 17-27-80 s.c. code ann, in this appeal for Writ of Cert

by filing an otherwise defaulted issue to the Supreme Court of South Carolina, and not seeking a remand based on an unsupported record in the PCR court where the trial transcript; two affidavits; (Monday Bishop and Val Hudson), a total of 75 Exhibits, the initial PCR Application as Exh #1, the Memorandum of Law as Exh #2, two Amended Petitions for PCR as Exh #3A-3B.) and Petitioner's Pro se Applicant Proposal as Exh B14. was not entered into the record.

(3) the Brady violation as Exh S-1 at Appendix at 150b was the only issue adjudicated on the proper form but was not appealed exposing the prosecutor misconduct and the prejudice because the state capitalized on the failure to call Monday Bishop, yet they actually interviewed her and failed to produce that information to the defense, moreover, the statement was in bad faith and it amounted to intentional prosecutorial misconduct. Had Petitioner had the interview notes Petitioner could have rebutted the states unfair argument. Sarah E. Shipe did not report misconduct nor violations of the Rules of Court and Statutes regarding this case.

(4) The State forfeited and or waived and or defaulted two allegations - issues raised in this instant PCR matter, see Exh #4 Order of Dismissal at pg 3. No. (5) and pg 4. No (5) regarding Val Hudson at pg 7 for two reasons: (1) delay and (2) prejudice.

Delay:

(1) Order of dismissal at pg 7. footnote is false and misleading and ten years delayed intentionally and did not reply to the claims raised at the April 17, 2023 PCR hearing. Note: "Applicant's original application and Allegation

5 of his first amended Application also mention Val Hudson as a potential witness Trial Counsel allegedly failed to interview. However, Applicant did not produce her testimony at the evidentiary hearing. Therefore, he has failed to prove Trial Counsel was ineffective for failing to interview or call her. See e.g., *Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279-80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call witnesses must produce these witnesses or their testimony at the PCR hearing).

Petitioner's rebuttal of the falsity is clear in the record, see, PCR hearing at pg 20; Appendix at 1420, words of the late Ms. Hudson: "In the State of South Carolina, Affidavit, I Lawanda Valeen Hudson, hereby swear of affirm under penalties for perjury pursuant to 16-9-10 South Carolina Code that the following statements are true and correct upon

belief or information. 1. Currently, I reside at Hartsville, South Carolina, 29550. Phone. In making this affidavit I read the testimony -- I read the testimony of Reed Allen, Davorious Mack and tell Terrell Addison, My testimony will comment by pages and line. I provided this affidavit to tell the truth of what happened at my friend, Monday Bishop's place on the night in October, 2006, when Reed Allen, who had been partying with us, lied that Monday's brother, Ben Stewart, gave him a gun in a bag to hide for him. I also provided this affidavit to say that Davorious Mack and Terrell Addison did not come to Monday's place that night and are lying when saying they was there and Ben gave Reed a gun." see; PCR hearing transcript April 17, 2023 at pgs 20- line 16-pg 21, line 7 also see Appendix at pg 1420, 16-1421, 7.

More importantly, with the false statement, the State and Order failed to reply to the testimony, qualified as a Rule 9(b) violation, regardless however, the state forfeited, waived and or defaulted the opportunity to reply intentionally violating, 17-27-70 (b) amounting to prejudice in undermining opposing party see; Kneece v. State, 269 S.C. 177, 18.

236 S.E. 2d 746 (1977) In Kneece, supra; the Court stated: "The record fails to show any prejudice to appellant from the delay by respondent in filing an answer, citing Herring v. State, 262 S.C. 597, 206 S.E. 2d 885 (1974) There, Louie Howard Kneece, appeal contended that the lower court was in error in failing to grant the relief requested because (1) the respondent failed to file an answer to the petitioner for post conviction relief within extended time granted by the lower Court and was therefore in default. Id.

Petitioner contends that the Kneece v. State holding and circumstances apply to this instant case and S.C. Const. Art 1 § 3, S.C. Const. Art. 1, § 9 and the Barker v. Wingo, supra, prongs are met depriving the Sixth Amendment right to speedy trial and Fourteenth Amendment due process and equal protection of the laws, namely, 71.1 SCRPC Post-CONVICTION RELIEF ACTION, (a), s.c. code Ann Section 17-27-10 to 120 (1985) Uniform Post Conviction Procedure Act.

Prejudice

(2) there can be no valid excuse to delay a PCR proceeding for ten plus years when the Applicant is alerting the Courts that the need for a expedited PCR hearing.

because a vital witness may be lost. See Exh #10; Exh #9; Exh #7; including the initial Memorandum Exh #2 at pg 22-33 all explaining that Val Hudson could succumb to her ailments in the very near future, quoting *Barker v. Wingo supra*,. In 2019, Val Hudson was lost as a witness in a six year delay, *Barker supra*, *Kneece supra*; furthermore, for the State to falsely imply and misstate important facts as her testimony not being available is unfair game and goes against due process, *Barker, supra*, *Kneece supra*; but more importantly, the Order of dismissal did not respond to the allegations and testimony at the PCR hearing, the Conditional order of dismissal, the Return, and the Amended Return, all abandon challenging Val Hudson testimony and therefore defaulted Judgment should be awarded to the Petitioner because prejudice is shown in the delay reply and order and it did answer the claims raised, but falsely misstated facts to further prejudice Petitioner.

WHEREFORE, Petitioner request with the exception of a new trial, request a motion for default Judgment, for identical relief in PCR Application at 11, Reversal of judgment of conviction due to intentional prosecutor conduct to rescue a failed prosecution —

bar retrial and discharge from custody; or Reversal of judgment of conviction due to Rule 55(e) because Petitioner established his claim to relief by evidence satisfactory to the Court and or Rule 55(a) because of affidavit filed January 8, 2016, 4:25 PM, Notice, Affidavit And Motion For Expedited PCR, at pg 3-4 regard, Val Hudson and the need for a hearing), and 2023 Order of Dismissal the claim was not answered, and release from custody

Reversal of judgment of conviction and sentence, and apply Kneec v. State, 269 S.C. 177, 236 S.E.2d 746 (1977) holding and circumstances. and release from custody

Reversal of judgment of conviction and sentence and apply Palmetto Construction Group, LLC v. Restoration Specialist, LLC, 428 S.C. 261, 834 S.E.2d 204 (2019) the second holding regarding waived rights, defaulting and forfeits rights to answer or otherwise plead the complaint, and release from custody.

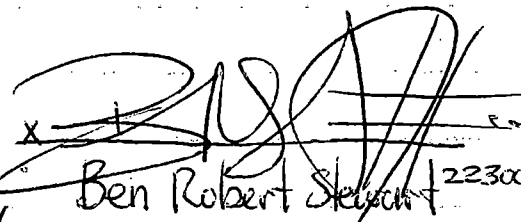
Reveral of judgment of conviction and sentence and apply Stokes v. Stirling, 141 F.4th 131 (4th Cir 2023) citing 2254(e)(2) the State forfeited any argument, where the record was not entered into evidence, the Petitioner

is prohibiting the State from considering evidence from the PCR Court, and enter judgment for the forfeited appeal and release from custody.

Reversal from sentence and conviction, because of the Kemp v. United States, 596 U.S. 529 (2022) second holding in misapplied controlling law, bar re prosecution due to incomplete record.

Reversal from sentence and conviction and enter judgment for remand based on holdings citations and authorities regarding herein in the interest of justice.

Dated: this _____ of _____ 2024,


Ben Robert Skewton 223006

990 Wisacky Highway
Bishopville, S.C. 29010