

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NOEL GRAY,

APPELLANT

APPELLATE CASE NO. 2012-213607

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

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1) His whereabouts at the time of the alleged Sexual Conduct.
 2) His relationship with the alleged victim "who was also the Mother's lover."

3) The relationship of Mike Williams wife Lora Becky Williams (See Exhibit's # 10-11) and Linda Brown

4) His real purpose of being a clown that involves children "Any - investigation's or any complaints, that may have been alleged against Mike Williams .

5) Mike Williams as the mysterious caller that "He" wished to remain "anonymos". Mike Williams manipulated false allegations that made the alleged victim Mimi on to fraudulently secure conviction to charge petitioner/applicant (See Exhibit's # 10-17).

This evidence gives raise to a denial of a fundamentally fair trial, where prosecutor established that Linda Brown was sole conspirator in the alleged Sexual assault against Christina Brown (Her child), where counsel allowed the State to shift the burden of proof towards her client (See Exhibit # 37),

The "New" evidence shines new light on / about the evidence gathered by the police, was orchestrated by Mike Williams to remove applicant from his involvement with Linda Brown,

Pursuant to S.C. Code Ann. § 17-27-45(c), requires that the applicant to file under this chapter "within one (1) year after the date of actual discovery of the facts." that would require the court to vacate Sentence or conviction, Applicant contends that this evidence was not present nor heard? See Jacque Blackwood (Exhibit # 30), who has known States witness (Tri.p. 88-94) Mike Williams for Twenty (20) years. Had this evidence been offered at trial, among other things, (by this - witness?) it could have been weighed by the jury, indeliberating upon it's verdict. Importantly, the jury would have had to decide the important issues of believability and Credibility of the States witnesses,

Last, this evidence would have a grave impact upon reasonable jurors.

Pursuant to STATE V. MCGUIRE, 272 S.C. 547, 550, 253 S.E. 2d 103, 104 (1979), Reversing a Conviction and Remanding for a New Trial where, among other things, the Trial Court erred by refusing to allow the defendant to impeach the credibility of a critical witness to the States case.

Also in STATE V. MITCHELL, 286 S.C. 572, 573, 336 S.E. 2d 150, 151 (1985), The Materiality and prejudicial character of the error must be determined from it's relationship to the entire case.

In STATE V. HOLMES, 320 S.C. 259, 264-65, 464 S.E. 2d, 334, 337 (1995) whether improper exclusion of impeachment evidence was prejudicial and required reversal depends on the "importance of the witness's testimony," to the prosecution's case, whether the testimony was cumulative, or whether other evidence corroborates or contradicts the witnesses testimony.

The extent of the Cross-Examination otherwise permitted, and the overall strength of the States case, Cert. denied, 135 L.Ed. 2d 197, 116 S.Ct. 2507 (1996).

IV

PLEA AGREEMENT

B:

Deficient Performance, turning to the facts of the instant application, Applicant finds that trial Counsel's failure to convey the States two (2) initial Plea offers to applicant constituted deficient performance (See EXHIBITS # 32-33). Applicant received a discovery package from Trial Counsel's office dated October 12, 2011, amongst the disclosure

was Two(2) plea offers that trial Counsel failed to communicate.

Although Counsel's failure to do so could be construed as to excusable neglect if one believes that the State's written offer was truly "lost" in the process of Counsel's office duties. Applicant contends that such neglect would not negate the deficient performance.

Applicant proceeded to trial on January 31 - February 2, 2005 without any counseling as to any strategy, yet alone to discuss any of the facts that may effect the outcome of the proceeding.

PREJUDICE, the prejudicial effect is clear, Counsel's failure to communicate a Plea Offer, whatever the terms, was inherently prejudicial because the deficient conduct prevented the applicant from making an informed decision, see e.g., STATE V. SIMMONS, - 65 N.C. App. 294, 309 S.E. 2d 493, 498 (N.C. Ct. App. 1983). Concluding, defendant was clearly prejudiced by his attorney's failure to inform him of the [Plea Bargain] offer; also HARRIS V. STATE, 875 S.W. 2d, 662, 665 (Tenn. 1994), ("There is no doubt that the prejudice suffered by defendant was the direct result of failure on the part of Defense Counsel to discuss the Plea Bargain offer with his client and his failure to respond timely to the State's offer"). STATE V. JAMES, 48 Wn. App. 353, 739 P. 2d 1161, 1167 (Wash. Ct. App. 1987). (If we were presented with a finding, supported by substantial evidence, that in fact [Counsel] failed to convey the plea negotiation to his client, we would have no hesitation in concluding they were denied effective assistance of Counsel on this error alone"). No pre-trial consultation accorded between counsel and applicant prior to trial. Trial Counsel had no reasonable basis for failing to inform him of such offer. Had this offer had been known, the applicant may have accepted the plea offered but for the inadequate notice the applicant proceeded to trial. See STRICKLAND V. WASHINGTON, - 466 U.S. 668 (1984) [A] defendant has the right to effective assistance -

of Counsel. JUDGE V. STATE, 321 S.C. 554, 471 S.E.2d 146 (1996); overruled on other ground by JACKSON V. STATE, 342 S.C. 95, 535 S.E.2d, - 926 (2000).

V

AFTER DISCOVERED EVIDENCE :

Pursuant to CRONIC analysis, the Court based it's inference on the circumstances surrounding the representation of HARRISON P. CRONIC, in particular the Court considered :

- 1) The time afforded to investigate and prepare;
- 2) Experience of Counsel;
- 3) Gravity of the charge;
- 4) The complexity of possible defense, and;
- 5) The accessibility of witnesses to Counsel. See U.S. V. CRONIC, - 466 U.S. 648, 653 (1984).

Applicant received two (2) Critical documents. Document #1) from "Justia.com" dated September 7, 2011 (see Exhibit #31) and; Document #2) Trial Counsel's Resume (see Exhibit #20-22), this document was provided by Ms. Wallis Alves, Chief Public Defender on October 13, 2011.

Facts as follows:

- 1) Trial Counsel Kelly P. Brown Esq. specialize in "Product Liability"
- 2) Trial Counsel graduated from University of South Carolina in (1997), therefore, Counsel had eight (8) years of experience when receiving applicants Case. ("It is not clear how much Trial Court Experience in "Criminal Law" that Counsel has had in chief.").

3) Prior to the University of South Carolina of Law, Counsel obtained a "Juris Doctor Degree". (It is evident that her role in the

Legal practice was restricted to a Legal Assistant.

4) Trial Counsel was inexperienced in Criminal Sexual Conduct Case.

5) Trial Counsel Consulted with applicant Once before trial. See A.C.R. Transcripts pg. 13 at 16-20 date seen applicant October 13, 2004.

6) Trial Counsel did not have ample time to reasonably research and investigate allegations of C.S.C., had she, she would have uncovered "Vendetta" and "Motive" for the State's witnesses testimony.

7) Applicants Sixth (6th) Amendment right to effective Assistance of Counsel was violated, when counsel failed to hold the State to it's Federal I.A.D.A Agreement. Trial Counsel became a friend of the Court by filing a "Joint Motion" on behalf of the State which resulted in the State moving forward in it's case (See Exhibit's # 35-36).

VI

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL:

1) Trial Counsel denied applicant his right to challenge that the Court lacked Subject Matter Jurisdiction.

2) Trial Counsel violated the applicants Due Process right by not presenting the Federal I.A.D.A Agreement Contract before the Court as a pre-Trial Motion (See Exhibit's # 23-28).

3) Trial Counsel failed to investigate and subpoena the following:

- (1) Dr. Betha M.D. A.R.C.;
- (2) Beatrice Coats D.S.S.;
- (3) Inv. Tim Randall A.C.S.O.;
- (4) Inv. New Ray W.E.P.D.;

- (5) Inv. David Blewins A.C.S.D.;
- (6) George Bush Esquire;
- (7) Mike Williams;
- (8) Lora Becky Williams;
- (9) Michael Williams Jr.;
- (10) Linda Brown and;
- (11) Denise Sheets, Federal

Under this issue, will be addressed in Ineffective Assistance of P.C.R. Counsel (See Section VII).

4) Trial Counsel failed to discuss the States offer to a lesser included offense or a Plea Bargain Offer "see Newly Discovered evidence" (Exhibits # 32-33).

5) Trial Counsel failed to have applicant evaluated by a psychologist.

6) Trial Counsel failed to move for a New Trial based on the State failing to disclose deal and lack of the State in prosecution of Linda Brown after giving inference to the jury it would (See S.C.R.C. 60(b)(3)).

7) Trial Counsel failed to impeach Dr. Bethea's Hearsay Testimony that was not supported by material facts, nor, was it even Scientifically Researched, nor, does it even exist.

8) Trial Counsel failed to challenge Trial Courts denial of Directed Verdict Motion that was preserved for Appellate review.

9) Trial Counsel failed to impeach Mike Williams testimony that impermissibly bolstered the States case and was prejudicially unconstitutional.

10) Trial Counsel failed to impeach Linda Browns testimony that was Unconstitutionally used to inflame the minds of the jury and the trial court, in which was extremely prejudicial and Harmful error by prosecution and bolstered the States case.

Finally, trial Counsel fatally failed the applicant by not objecting to the States Inference that "Linda Brown is not on

Trial today" placed in the minds of the jurors that Linda Brown was sole principle that resulted in the Sexual abuse and the Sole Care, Custody and Control over Christina Brown. And will be held accountable after the prosecution of Applicant. This failure to object denied applicant the "Impartiality" as required by Due Process of Law. See Newly discovered evidence (Exhibit # 37)

VII

"INEFFECTIVE ASSISTANCE OF P.C.R. COUNSEL" EVIDENTIARY HEARING: Infra.

1) P.C.R. Counsel failed to address all issues pursuant to applicants request FOSTER V. STATE, 379 S.E.2d 907 (S.C. 1989); STATE V. STUCKEY, 333 S.C. 56, 508 S.E.2d 564 (1998); U.S. V. SINGLETON, 107 F.3d 1091, 1102 (4th Cir. 1997).

2) P.C.R. Counsel inadequately raised Federal I.A.O.A. Contract violations at applicants P.C.R. Hearing, thereby, denied the court the evidence that may have granted applicant a new hearing.

3) P.C.R. Counsel failed to raise that the police investigation's were incomplete.

4. P.C.R. Counsel failed to interview or subpoena eleven (11) Critical Witnesses.

- (1) Dr. Bethen M.D. ARC;
- (2) Beatrice Coats D.S.S.;
- (3) Inv. Tim Randall A.C.S.O.;
- (4) Inv. Hew Ray N.E.P.D.;
- (5) Inv. David Blevins A.C.S.O.;
- (6) George Bush Esquire;
- (7) Mike Williams;
- (8) Lora Becky Williams;
- (9) Michael Williams Jr.;

- (10) Linda Brown; and;
- (11) Denise Sheets (Federal)

As numbered above: infra.

- (1) Dr. Bethen - Elements of Penetration / Hearsay Testimony
- (2) Beatrice Coats D.S.S. - Allegations of Sexual Abuse by others, but no evidence on applicant but found him founded.
- (3) Inv. Tim Randall - Initial Investigator
- (4) Inv. Hew Ray - Initial Investigator
- (5) Inv. David Blevins - Inadequate Investigations and Vandalism, and False C.O.U. Warrant on Applicant.
- (6) George Bush Esq - Vandalism to Linda and Mike
- (7) Mike Williams - Lying for Linda, Affair w/Linda, touching Christina.
- (8) Lora Beck Williams - Mike Lying, affair w/Linda and Character of applicant.
- (9) Michael Williams Jr. - Abuse of Linda from husband; Step in same living room with Minor
- (10) Linda Brown - Lying about Separation of husband, C.O.U. Warrant, abuse of Minor and Vandalism.
- (11) Denise Sheets - obligations that the State has upon Violation of Federal Agreement Contract by State and Trial Counsel.

5) P.C.R. Counsel failed to properly present the Trial Court issue of Subject Matter Jurisdiction (lack of) when the applicants Trial Counsel became a friend of the State and prosecution violated Federal I.A.O.A. Contract in which denied the Court right to jurisdiction See STATE V. GENTRY.

6) P.C.R. Counsel failed to argue that applicant did address the Directed Verdict Motion that was preserved for Appellate Review.

VIII

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ON COLLATERAL
APPEAL (P.C.R.).

As alleged Supra., i.e. I - SUCCESSIVE

- 1) Appellate Counsel failed to address that P.C.R. Counsel failed to Alter or Amend P.C.R. to include all grounds,
- 2) Appellate Counsel failed to address that P.C.R. Counsel failed to insert applicants claim, inadequately raised in his Original Application on P.C.R.
- 3) Appellate Counsel failed to address that P.C.R. Counsel failed to Subpoena Witnesses, so that applicant can prove his burden as required by S.C. Code 71.1(c)
- 4) Appellant Counsel failed to address that P.C.R. Counsel failed to file a Rule 59(c) as required by law; see MARLAR V. STATE, - 644 S.E. 2d 769 (S.C. Ct. App. 2007).
- 5) Appellant Counsel failed to address that P.C.R. Counsel failed to adequately investigate and research applicants claim, that the record may reflect completeness - facts of law. Applicant's Appellate Counsel also failed to "note" that P.C.R. Counsel was fatally deficient - in representing applicant at p.c.r. (See Exhibit # 6),
- 6) Appellant Counsel failed to address that P.C.R. Counsel failed to challenge Ineffective Assistance of Appellate Counsel on Directed Verdict Motion that was preserved for Appellate Review.
- 7) Appellate Counsel failed to address that P.C.R. Counsel was incompetent to represent applicant in a civil / criminal procedural review. Therefore, P.C.R. Counsel's Representation in it's self is prejudice accordingly to CRONIC Supra., (See Exhibit # 6), and -

8) Appellate Counsel failed to Move the Court that the applicants records were incomplete and were fatally defective, in violation of Rule 609.

CONCLUSION

For the foregoing reasons, Applicant respectfully request this Court to dismiss the Respondents Motion To Dismiss and Grant Applicant Counsel and evidentiary hearing.

Respectfully Submitted
I AM

Noel Gray #307540
Noel Gray #307540
Murray #212
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, SC. 29210

Columbia, SC.

12-7-11

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

IN SUPPORT TO THIS POST CONVICTION RELIEF APPLICATION
PURSUANT TO S.C. CODE ANN. §17-27-20 through §17-27-160

Noel Gray #307590,

APPLICANT,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

CERTIFICATE OF SERVICE

I Noel Gray #307590 Certify that a True Copy of this Post Conviction Relief Application, with attached EXHIBITS in this case have been submitted in this Honorable Court by U.S. Mail, postage pre-paid on the 7th day of December, 2011.

Noel Gray #307590
Noel Gray
Pro. Per Applicant

Sworn and Subscribed before me

this 7th day of December, 2011

Susan H. Fryc

My Commission Expires: _____

My Commission Expires
March 5, 2018

RECEIVED

THE STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT COURT

DEC 07 2011

BRCI
AUDITORIUM

Noel Gray #307590

)

)

CASE NO.

V.

)

- AFFIANT OF NOEL GRAY -THE STATE OF SOUTH CAROLINA

COMES NOW, being duly sworn and deposed, I Noel Gray,
Under the penalty of perjury that the following document's are True and
Correct to the best of my knowledge and belief.

MATERIAL FACTS AS FOLLOWS: "EVIDENCE"

- 1) NOTICE OF INTENT TO APPEAL February 7, 2005 (EXHIBIT #1)
- 2) CERTIFICATE OF SERVICE (EXHIBIT #2)
- 3) NOTICE OF INTENT TO APPEAL February 7, 2005 (EXHIBIT #3)
- 4) S.C. Court of Appeals Unpublished Opinion January 11, 2008 (EXHIBIT #4)
- 5) REMITTITUR January 30, 2008 (EXHIBIT #5)
- 6) Letter from P.C.R. Counsel to Applicant December 18, 2008 (EXHIBIT #6)
- 7) Letter from Appellate Counsel / Writ of Certiorari December 2, 2010 (EXHIBIT #7)
- 8) Order from Court December 2, 2010 (EXHIBIT #8)
- 9) REMITTITUR December 21, 2010 (EXHIBIT #9)
- 10) Letter from Becky Williams September 22, 2001 (EXHIBIT #10)
- 11) 2nd letter from Becky Williams September 22, 2001 (EXHIBIT #11)
- 12) Letter from Michael Williams Jr. November 20, 2001 (EXHIBIT #12)
- 13) Letter from Linda Brown November 22, 2001 (EXHIBIT #13)
- 14) Letter from Minor "C.B." November 22, 2001 (EXHIBIT #14)
- 15) Letter from Mike Williams November 30, 2001 (EXHIBIT #15)

- 16) Letter from Mike Williams September 30, 2004 (EXHIBIT # 16)
- 17) Letter from Michael Williams Jr. (EXHIBIT # 17)
- 18) I.A.O.A Federal Letter TO SOLICITOR MAY 5, 2004 (EXHIBIT # 18)
- 19) Page 2 of (EXHIBIT # 18) (EXHIBIT # 19)
- 20) TRIAL COUNSEL FAILING TO PROVIDE INFORMATION October 7, 2011 (EXHIBIT # 20)
- 21) Trial Counsel's Job Resume Page 1 of 2 (EXHIBIT # 21)
- 22) Page 2 of 2 (EXHIBIT # 22)
- 23) F.O.I.A Request Letter from Wallis Alves October 13, 2011 (EXHIBIT # 23)
- 24) I.A.O.A Federal Deadline Acknowledgement MAY 11, 2004 (EXHIBIT # 24)
- 25) Notice of Untried Indictment May 5, 2004 (EXHIBIT # 25)
- 26) Agreement on Detainers FORM VII (EXHIBIT # 26)
- 27) FORM III (EXHIBIT # 27)
- 28) Prosecutor's Certification August 19, 2004 (EXHIBIT # 28)
- 29) Letter Concerning Discovery September 23, 2011 (EXHIBIT # 29)
- 30) Statement from Jackie Blackwood October 31, 2011 (EXHIBIT # 30)
- 31) Justice.com printout on Trial Counsel September 7, 2011 (EXHIBIT # 31)
- 32) PLEA Agreement Offer October 7, 2004 (EXHIBIT # 32)
- 33) PLEA Agreement Offer January 21, 2005 (EXHIBIT # 33)
- 34) Trial Counsel Notice August 16, 2004 (EXHIBIT # 34)
- 35) Unconstitutional Order Filed by Counsel October 29, 2004 (EXHIBIT # 35)
- 36) Signed by Trial Counsel and Solicitor Joint Motion (EXHIBIT # 36)
- 37) Lindy Brown never Indicted or Prosecuted November 22, 2011 (EXHIBIT # 37)

Defender Corporation of Aiken County
 410 Barwell Avenue, NW
 Post Office Box 2247
 Aiken, South Carolina 29802

Wallis A. Alves, Chief Public Defender
 Kelley Perkins Brown, Deputy Public Defender
 David M. Meuldin, Assistant Public Defender

H. Lane Danielson, Assistant Public Defender
 Billie B. Goodman, Assistant Public Defender

February 7, 2005

South Carolina Commission
 Of Appellate Defense
 Suite 306
 1205 Pendleton Street
 Columbia, SC 29201

Attention: Lorie Whitt

RE: NOTICE OF INTENT TO APPEAL
 NOEL GRAY
 2004-GS-02-1333-1334

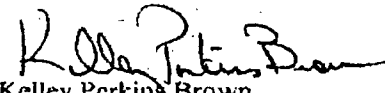
Dear Mrs. Whitt:

Please find enclosed copies of Notice of Intent to Appeal, Indictment 2004-GS-02-1333-1334, Arrest Warrant F-718991, and F-718990 and defendant's affidavit of indigency.

Noel Gray had a jury trial and was convicted of two counts of Criminal Sexual Conduct with Minor, 2nd degree, and was sentenced on February 3, 2005 before the Honorable Jackson Gregory. Ms. Brenda Sigwald served as the Court Reporter. Her address is P. O. Box 206, Jackson, SC 29831.

I am available to discuss this case if you so desire.

Sincerely,


 Kelley Perkins Brown
 Deputy Public Defender

KPB:mr
 Enclosure

Telephone: (803) 642-1732 Fax: (803) 642-1739

(EXHIBIT #1)

NOTICE OF INTENT TO APPEAL

State of South Carolina

Vs:

Noel Gray- appellant
2004-GS-02-1333-1334

CERTIFICATE OF SERVICE

I, Mary Rankin, do hereby certify that I have this day served the original of Appellate's Notice to Appeal upon the South Carolina Court of Appeals, and copies of Appellate's Notice of Intent to Appeal to the Clerk of Court of Aiken County, and to Barbara R. Morgan, Solicitor, Second Judicial Circuit, by placing same in the United States Mail properly addressed and with correct postage affixed thereto:

South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

South Carolina Commission
Of Appellate Defense
Suite 306
1205 Pendleton Street
Columbia, SC 29202

Clerk of Court
Aiken County Judicial Circuit
Post Office Box 583
Aiken, SC 29802

Barbara R. Morgan
Solicitor
Second Judicial Circuit
Post Office Box 3368
Aiken, SC 29802

Dated this 7 day of Feb, 2005

Mary Rankin
Mary Rankin
Secretary to Appellant's Attorney
Post Office Drawer 2247
Aiken, SC 29802
803-642-1732

(EXHIBIT # 2)

NOTICE OF INTENT TO APPEAL
THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
FROM AIKEN COUNTY
THE HONORABLE JACKSON GREGORY
February 7, 2005

Indictment # 2004-GS-02-1333-1334

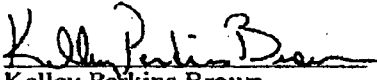
THE STATE OF SOUTH CAROLINA -- Respondent

VS.

NOEL GRAY-- Appellant

NOTICE OF INTENT TO APPEAL

Noel Gray had a jury trial and was convicted of two counts of Criminal Sexual Conduct with Minor 2nd degree, on February 3, 2005 before the Honorable Jackson Gregory. He appeals his conviction and sentence.


Kelley Perkins Brown
Attorney for Defendant

Other Counsel of record is:

Everett Chandler
Assistant Solicitor
Second Judicial Circuit
P.O. Drawer 3368
Aiken, SC 29802

(EXHIBIT # 3)

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Noel Gray,

Appellant.

Appeal From Aiken County
Jackson V. Gregory, Circuit Court Judge

Unpublished Opinion No. 2008-UP-040
Submitted January 2, 2008 – Filed January 11, 2008

APPEAL DISMISSED

Eleanor Duffy Cleary, South Carolina Commission
on Indigent Defense, Division of Appellate Defense,
for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh, (EXHIBIT #4)
Assistant Deputy Attorney General Salley W. Elliott,



RECEIVED

JAN 31 2008

ATTORNEY GENERAL'S OFFICE

The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11429
COLUMBIA, SOUTH CAROLINA 29211
1013 SUMNER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
WWW.SCCOURTS.ORG

January 30, 2008

REMITTITUR

The Honorable Liz Godard
109 Park Ave
PO Box 583
Aiken, SC 29802-0583

COPY FILED February 11, 2008
Liz Godard
S.C.C.P. & G.S. Clerk
Shannon W. Rosenkrantz
Deputy Clerk

Re: The State v. Gray, Noel
2004-GS-02-01333 2004-GS-02-01334

Dear Mrs. Godard:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

Rence S. Johnson
Rence S. Johnson
Administrative Specialist

KAR
KAR/rj

cc: Appellate Defender Eleanor Duffy Cleary
Noel Gray #307590
Assistant Deputy Attorney General Salley W. Elliott
Barbara R. Morgan, Esquire

opies: Sheriff's Department
Solicitors Office
Kelley Brown, PD Office

(EXHIBIT # 5)

Page #2

BRADLEY L. BONI
Attorney at Law
208 Newberry Street, NW
Aiken, South Carolina 29801

Mailing Address

Post Office Box 652
Aiken, South Carolina 29802

Telephone: (803) 644-4460
Fax: (803) 644-4469

December 18, 2008

Noel Gray #307590
Broad River Correctional Institute
4460 Broad River Road
Columbia, SC 29210

Re: Case Number 2008-CP-02-734

Dear Mr. Gray:

I am in receipt of your letters dated May 6, 2008, and October 20, 2008, as well as your Christmas card. Thank you for the thoughtful card, and I must apologize for having not written sooner. In your first letter you asked how long I've been practicing law and if I have ever done a C.S.C. case. To answer, I have been practicing 8 years, and I have never tried a C.S.C. case to which I'm assuming you mean a Criminal Sexual Conduct case. I am not a criminal nor trial lawyer. My practice is limited to real estate and probate. As soon as I can come down to Columbia, I will do so in order that we may meet in person. In the meantime, please do not hesitate to contact me in the future.

With Best Regards,

100



Bradley L. Boni

(EXHIBIT 6)

6



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11230
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1090

FAX (803) 734-1499

December 2, 2010

Deputy Chief Appellate Defender Wanda H. Carter
South Carolina Commission on Indigent Defense
P O Box 11589
Columbia, SC 29211

Re: Gray, Noel Jr. v. The State

Dear Counsel:

Enclosed is the Order denying your Petition for Writ of Certiorari and granting your Petition to be Relieved as Counsel in the above entitled matter.

The remittitur will be sent to the lower court as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,


CLERK

DES/jj

cc: Noel Gray #307590
Assistant Attorney General Mary S. Williams

(EXHIBIT 17)

The Supreme Court of South Carolina

Noel Gray, Jr.,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER

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 has responded *pro se*.

After careful consideration of the entire record as required by *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.


C. J.
FOR THE COURT

Columbia, South Carolina

December 2, 2010

(EXHIBIT 8)



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1000

FAX (803) 734-1499

December 21, 2010

REMITTITUR

The Honorable Liz Godard
109 Park Ave
PO Box 583
Aiken, SC 29802-0583

Re: Gray, Noel Jr. v. The State – 2008-CP-02-00734

Dear Mrs. Godard:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,


CLERK

DES/jj

cc: Deputy Chief Appellate Defender Wanda H. Carter
Noel Gray #307590
Assistant Attorney General Mary S. Williams

(EXHIBIT # 9)

9-22-61

To whom it may concern:

This letter is in Reference to Noel Eugene Gray (Junior) He is needed home really bad. He is a very sweet and kind human being. Once you get to know him. He has been a real big help to Linda M. Brown and doesn't physically abuse her like her ex-husband did. Noel Gray has also helped Linda Brown with her mother who is going blind and her father which has alzheimer's. Linda Brown has a lot of Medical problems and just recently has back surgery in which Noel E. Gray helped her get through. He (Noel E. Gray) loves Linda Brown and cares deeply for her and she needs him home and has also helped her with her daughter

MIMI - with her schooling. Noel E. Gray has helped me and my husband around our house since he has lived with us since July. Our son thinks of him as his big brother and looks up to him. Noel Gray has helped Meg with his schooling. Please let him come home we all desperately need him home.

(EXHIBIT # 10)

Theresa
Lora Beatty Williams

9-22-01

To Whom it may concern:

This letter is in reference to Noel Eugene Gray (Sunny). He is needed home really bad. He is a very sweet and kind human being. He has been a great help to Linda M. Brown during the stress and surgery she has been up under. He has helped Linda Brown with her parents her mom is going blind and her father has alzheimer's disease. He has been a big help around my home since he has lived with me and my husband since July. He is needed home for the sake of Linda Brown's health and her parents. He is a very good and ~~smart~~ individual once you get to know him. A little the way he can make you laugh when you're down and out. He has helped me with my two children and talked to me when I felt blue. He has really been an inspiration for ~~me~~ Linda Brown since her separation from her husband. Noel Eugene Gray does ~~not~~ ^{loves} his wife like her ex-husband did. She has been through a rough marriage & has a lot of medical problems and Noel Gray has been a big help to her. So please, (EXHIBIT #11) please let him come home.

"

Thank
Lora Beatty Williams "

11-20-01

This is a statement from I
 Micheal Williams about Noel Gray Jr.
 (Junior). The reason Noel is needed
 home is because he is like a brother
 to me. He has helped me in my school
 work. He has volunteered at my school.
 He has taken me hunting, and fishing.
 He has talked to me when I needed
 someone to talk to. That is why Noel
 is needed home. Noel is a big help to
 my aunt Linda. He loves her. He
 doesn't abuse her like her ex-husband.
 He helped her after her surgery.
 This is coming from a 13 ~~old~~ year olds
 point of view. He has lived in my house
 since the middle of July. He has never
 did anything to hurt anyone that
 I know of. He has ~~not~~ treated me and
 every one else in this house with
 the up most love and respect. He has
 never done anything to me wrong so
 why bring up his past now. He
 has always treated me like I was
 somebody. So now I'm paying him
 back with everything I can. I'll do
 anything to help ~~him~~ ^{that} I can.

Micheal
 Williams

(EXHIBIT 12)

12

12

11-22-01

To whom it may concern,
 This letter is being written on
 behalf of Abel Gray Sr. Abel is
 a good wonderful man. He has
 helped me thru so much, my
 surgeries, my family life. My mother
 is going blind and my dad has
 Alzheimers. It's been really hard
 without him. I recently had my 3rd
 back surgery. I desperately need him
 home with us. I need his help.
 Please send it to your heart to help
 me get him home where he belongs.
 I love him with all my heart.
 I need him home. Please I'm begging
 you for your help.

Thank You
 Linda M. Brown

MOTHER OF ALLEGED VICTIM

13

(EXHIBIT # 13)

13

11-22-01

To whom it may concern, My Name is "Misha"
 n. I'm writing this letter on behalf
 of Noel Gray Jr. He's a very kind and
 loving and talented person. My hopes are
 to have him back home with me and
 my mom where he belongs. He has never
 done anything bad to me or my mom. He
 loves me and my mom with all his heart
 and wants to marry my mom and be
 a Dad to me. please use if in your heart
 to let him come home so we can be happy
 again. please I'm begging you.

Misha

Mc and my mom
 need his help!!!

AGE 13

(EXHIBIT # 14)

14

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Noel Gray, #307590,

2011-CP-02-2776

Applicant,

v.

RETURN AND MOTION TO
DISMISS

State of South Carolina,

Respondent.

FILED

23 JAN 2012

L. Hodard
C.C.P. & C.S.

8:30 *Angel Miles* am
am Deputy Clerk

In response to the post-conviction relief application filed December 9, 2011, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Aiken County. The Applicant was indicted for two counts of Criminal Sexual Conduct ("CSC") with a Minor - Second Degree (2004-GS-02-1333 & 1334). Kelley P. Brown, Esquire, represented him. Applicant was found guilty of both counts following a jury trial. On February 2, 2005, he was sentenced by the Honorable Jackson V. Gregory to life imprisonment without the possibility of parole.

Applicant filed an appeal, and both an Anders brief and *pro se* brief were submitted. The appeal was dismissed. State v. Gray, Op. No. 2008-UP-040 (S.C. Ct. App. filed January 11, 2008). The Remittitur was sent on January 30, 2008.

Applicant initially filed an application for post-conviction relief (PCR) on April 18, 2008 (2008-CP-02-0734). In his application, Applicant set forth the following grounds for relief:

1. "Violation of Federal Interstate Agreement on Detainers Act."

2. Ineffective assistance of counsel.
3. Subject matter jurisdiction.

An evidentiary hearing was convened on February 2, 2009, at which Applicant was present and represented by counsel. In an order dated April 2, 2009, and filed April 6, 2009, the Honorable Doyet A. Early, III, denied and dismissed the application with prejudice. A Johnson Petition for Writ of Certiorari was then filed in the South Carolina Supreme Court. The Petition was denied on December 2, 2010, and the Remittitur was sent on December 21, 2010.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence.
 - a. "Trial Counsel failed to record any statements (in writing, or by audio or video), from any conversation with any neighbors or anyone who knew Mike Williams..."
 - b. "...failed to interview any known acquaintances of Linda Brown and Mike Williams to authenticate or disprove what they told the police and the jury."
 - c. "...failed to interview Mike Williams, (Linda Brown's lover), or at least disclose any evidence of bad blood against applicant and evidence of bad blood between Linda Brown and applicant."
 - d. "...failed to conduct an interview with any other occupants that lived within Mike Williams residence before, during, and after the alleged incidents to gather salient information concerning the alleged victim and Mike Williams..."
 - e. Failed to investigate "the total circumstance" of Mike Williams residence and any eyewitnesses to various aspects of the case, including but not limited to: where he was at time of sexual misconduct, his relationship with the victim, relationship of his wife and Linda Brown, his "real purpose of being a clown," and Mike Williams as the anonymous caller.
 - f. Failed to convey plea offer.
 - g. Discovery of trial counsel's resume which shows inexperience.
 - h. Ineffective assistance of trial counsel in:
 - i. Failed to challenge subject matter jurisdiction.
 - ii. Violated due process by not presenting IADA agreement issue as a pre-trial motion.

- iii. Failed to subpoena and investigate witnesses. (Several named individuals.)
- iv. Failed to discuss lesser included offense or plea offer.
- v. Failed to have applicant evaluated by psychologist.
- vi. Failed to move for trial where Linda Brown was not prosecuted but there was an inference to the jury she would be.
- vii. "...failed to impeach Dr. Bethea's hearsay testimony that was not supported by material facts, nor was it even scientifically researched, nor does it even exist."
- viii. "...failed to challenge trial court's denial of directed verdict motion that was preserved for appellate review."
- ix. "...failed to impeach Mike Williams testimony that impermissibly bolstered the State's case and was prejudicially unconstitutional."
- x. "...failed to impeach Linda Brown's testimony that was unconstitutionally used to inflame the minds of the jury and the trial court, in which it was extremely prejudicial and harmful error by prosecution and bolstered the State's case."
- xi. Failed to object to statement that "Linda Brown is not on trial today."

2. Ineffective assistance of PCR counsel.

- a. Failed to address all issues.
- b. Inadequately raised IADA issue.
- c. Failed to raise incomplete police investigation.
- d. Failed to subpoena witnesses (several specific witnesses listed).
- e. Failed to properly present subject matter jurisdiction issue.
- f. "...failed to argue that applicant did address the directed verdict motion that was preserved for appellate review."

3. Ineffective assistance of PCR counsel on collateral appeal.

- a. "...failed to address that PCR counsel failed to alter or amend PCR to include all grounds."
- b. "...failed to address that PCR counsel failed to insert applicant's claim, inadequately raised in his original application PCR."
- c. "...failed to address that PCR counsel failed to subpoena witnesses..."
- d. "...failed to address that PCR counsel failed to file a Rule 59(e) as required by law."
- e. "...failed to address that PCR counsel failed to challenge ineffective assistance of appellate counsel on directed verdict motion that was preserved for appellate review."
- f. "...failed to address that PCR counsel failed to challenge ineffective assistance of appellate counsel on directed verdict motion that was preserved for appellate review."

- g. "...failed to address that PCR counsel was incompetent to represent applicant in a civil/criminal procedural review...."
- h. "...failed to move the court that the applicants records were incomplete and were fatally defective, in violation of Rule 609."

For the purposes of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of

showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on February 2, 2005. The Remittitur after the Applicant's unsuccessful appeal, on January 30, 2008. This Application was filed on December 9, 2011, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

Columbia, South Carolina

January 20, 2012

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

NOEL GRAY, 307590,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-02-2776

AFFIDAVIT OF SERVICE BY MAIL

FILED 23 Jan 2012Lij Hodard
C.C.P. & G.S.8:30 am Angel Miles am
Deputy Clerk

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following persons by depositing same in the United States mail, postage prepaid:

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

DATED this 20th day of January, 2012.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

2011-CP-02-2776

Noel Gray, #307950,

Applicant,

- v.

**CONDITIONAL ORDER OF
DISMISSAL**

State of South Carolina,

Respondent.

This matter comes before this Court by way of an application for post-conviction relief filed December 9, 2011. In its Return, Respondent requests that the action be summarily dismissed. Before this Court are the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and records from Applicant's previous application for post-conviction relief. The records before this Court reflect that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Aiken County. The Applicant was indicted for two counts of Criminal Sexual Conduct ("CSC") with a Minor - Second Degree (2004-GS-02-1333 & 1334). Kelley P. Brown, Esquire, represented him. Applicant was found guilty of both counts following a jury trial. On February 2, 2005, he was sentenced by the Honorable Jackson V. Gregory to life imprisonment without the possibility of parole.

Applicant filed an appeal, and both an Anders brief and *pro se* brief were submitted. The

1 of 7

DAE
#1

FILED 2 Feb 20 12
Liz Godard
C.C.P. & G.S.
8:30 Angel Miles am
DM Deputy Clerk

appeal was dismissed. State v. Gray, Op. No. 2008-UP-040 (S.C. Ct. App. filed January 11, 2008).

The Remittitur was sent on January 30, 2008.

Applicant initially filed an application for post-conviction relief (PCR) on April 18, 2008 (2008-CP-02-0734). In his application, Applicant set forth the following grounds for relief:

1. "Violation of Federal Interstate Agreement on Detainers Act."
2. Ineffective assistance of counsel.
3. Subject matter jurisdiction.

An evidentiary hearing was convened on February 2, 2009, at which Applicant was present and represented by counsel. In an order dated April 2, 2009, and filed April 6, 2009, the Honorable Doyet A. Early, III, denied and dismissed the application with prejudice. A Johnson Petition for Writ of Certiorari was then filed in the South Carolina Supreme Court. The Petition was denied on December 2, 2010, and the Remittitur was sent on December 21, 2010.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Newly discovered evidence.
 - a. "Trial Counsel failed to record any statements (in writing, or by audio or video), from any conversation with any neighbors or anyone who knew Mike Williams..."
 - b. "...failed to interview any known acquaintances of Linda Brown and Mike Williams to authenticate or disprove what they told the police and the jury."
 - c. "...failed to interview Mike Williams, (Linda Brown's lover), or at least disclose any evidence of bad blood against applicant and evidence of bad blood between Linda Brown and applicant."
 - d. "...failed to conduct an interview with any other occupants that lived within Mike Williams residence before, during, and after the alleged incidents to gather salient information concerning the alleged victim and Mike Williams..."

- e. Failed to investigate "the total circumstance" of Mike Williams residence and any eyewitnesses to various aspects of the case, including but not limited to: where he was at time of sexual misconduct, his relationship with the victim, relationship of his wife and Linda Brown, his "real purpose of being a clown," and Mike Williams as the anonymous caller.
- f. Failed to convey plea offer.
- g. Discovery of trial counsel's resume which shows inexperience.
- h. Ineffective assistance of trial counsel in:
 - i. Failed to challenge subject matter jurisdiction.
 - ii. Violated due process by not presenting IADA agreement issue as a pre-trial motion.
 - iii. Failed to subpoena and investigate witnesses. (Several named individuals.)
 - iv. Failed to discuss lesser included offense or plea offer.
 - v. Failed to have applicant evaluated by psychologist.
 - vi. Failed to move for trial where Linda Brown was not prosecuted but there was an inference to the jury she would be.
 - vii. "...failed to impeach Dr. Bethea's hearsay testimony that was not supported by material facts, nor was it even scientifically researched, nor does it even exist."
 - viii. "...failed to challenge trial court's denial of directed verdict motion that was preserved for appellate review."
 - ix. "...failed to impeach Mike Williams testimony that impermissibly bolstered the State's case and was prejudicially unconstitutional."
 - x. "...failed to impeach Linda Brown's testimony that was unconstitutionally used to inflame the minds of the jury and the trial court, in which it was extremely prejudicial and harmful error by prosecution and bolstered the State's case."
 - xi. Failed to object to statement that "Linda Brown is not on trial today."
- 2. Ineffective assistance of PCR counsel.
 - a. Failed to address all issues.
 - b. Inadequately raised IADA issue.
 - c. Failed to raise incomplete police investigation.
 - d. Failed to subpoena witnesses (several specific witnesses listed).
 - e. Failed to properly present subject matter jurisdiction issue.

- f. "...failed to argue that applicant did address the directed verdict motion that was preserved for appellate review."
- 3. Ineffective assistance of PCR counsel on collateral appeal.
 - a. "...failed to address that PCR counsel failed to alter or amend PCR to include all grounds."
 - b. "...failed to address that PCR counsel failed to insert applicant's claim, inadequately raised in his original application PCR."
 - c. "...failed to address that PCR counsel failed to subpoena witnesses..."
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 - e. "...failed to address that PCR counsel failed to challenge ineffective assistance of appellate counsel on directed verdict motion that was preserved for appellate review."
 - f. "...failed to address that PCR counsel failed to challenge ineffective assistance of appellate counsel on directed verdict motion that was preserved for appellate review."
 - g. "...failed to address that PCR counsel was incompetent to represent applicant in a civil/criminal procedural review...."
 - h. "...failed to move the court that the applicants records were incomplete and were fatally defective, in violation of Rule 609."

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior applications for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous

application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

The Applicant's contention that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

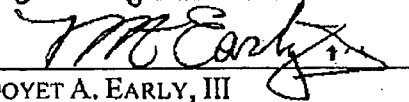
The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on February 2, 2005. The Remittitur after the Applicant's unsuccessful appeal, on January 30, 2008. This Application was filed on December 9, 2011, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, this Court finds that the application for post-conviction relief should be summarily dismissed for failure to file within the time mandated by statute and for being successive.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Aiken County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: Mary S. Williams, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 25th day of January, 20 12


DOYET A. EARLY, III
Chief Administrative Judge
Second Judicial Circuit Court

Bamberg, South Carolina

543
RECEIVED

FEB 01 2012

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

BRCI
MAILROOM

Noel Gray #307590)
CASE NO. 2011-CP-02-2776
)
vs.) Re: Applicants Response to the Respondent's
) Return and Motion to Dismiss / Conditional
State of South Carolina) Order of Dismissal

Honorable Clerk,

Please find enclosed, Applicants Response to the Respondent's
Return and Motion to Dismiss / Conditional Order of Dismissal,

A True Copy of this Response has been Mailed, postage
pre-paid to Ms. Mary S. Williams Asst. Attorney General p.o. Box -
11549, Columbia, S.C. 29211 on this 1st. day of February, 2012.

Also, please find enclosed a self addressed envelope to
send applicant a Clock Stamped Copy back please.

Respectfully Requested
God Bless You All
Noel Gray #307590
B.R.C.I. Murray 2128
4460 Broad River Rd.
Columbia, S.C. 29210

February 1, 2012
Richland, South Carolina.

RECEIVED

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

FEB 01 2012

BRCI
MAILROOM

Noel Gray #307590) CASE NO. 2011-CP-02-2776

v.

) APPLICANT'S RESPONSE TO THE RESPONDENT'S

) RETURN AND MOTION TO DISMISS / CONDITIONAL

State of South Carolina) ORDER OF DISMISSAL.

COMES NOW Noel Gray, #307590, pro-se, In Response to the Return/
Motion to Dismiss and Conditional Order of Dismissal filed January 20,
2012.

In 1969, South Carolina adopted our version of the Uniform Post-Conviction Relief Act (UPCA). The UPCA directed that the Post Conviction Relief (P.C.R.) was to encompass the relief available under the Common Law writ of habeas Corpus; the relief available under the expansion of the writ, and the relief available by collateral attack. Under any common law, Statutory, or other writ, motion, petition, proceeding, or remedy. Williams v. Ozmint, 380 S.C. 473 (S.C. 2008), - Citing Simpson v. State, 329 S.C. at 44, 495 S.E.2d at 430 (1998), - S.C. Code Ann. § 17-27-90(b) (2007).

The State submits that the Current P.C.R. Application should be summarily Dismissed because it is Successive. Although Successive PCR Applications are disfavored, they are not prohibited Williams v. Ozmint, at 380 S.C. at 477. Citing Washington v. State, 324 S.C. 232; 478 S.E. 2d 833 (1996), (allowing successive PCR Application where the defendant was denied due process due to numerous procedural irregularities).

A Successive PCR Application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raised grounds waived in prior proceedings, - Graham v. State, 378 S.C. 1, 3 (S.C. 2008), Applicant has raised the issue of Ineffective Assistance of Counsel from the beginning, but these issues have not been fully presented, heard and determined. Whether this Application is considered Successive or Not, State -

and Federal Due Process, as well as South Carolina Case Law, require that the Applicant have the opportunity to present his P.C.R. Issues fully, at least once.

Pursuant to South Carolina Code Ann. § 17-27-90 (2009), the applicant is intitled to "assert" a Sufficient reason "why these claims he presented in this subsequent application" was not asserted or was inadequately raised in the Original Supplement or amended application," Id. Application has raised grounds that could not have been raised in his prior P.C.R. - See Respondent's Conditional Order of Dismissal (COD) page 3 and 4, i.e., Ineffective Assistance of PCR Counsel and Ineffective Assistance of PCR Counsel on Collateral Appeal.

The Sixth Amendment right to notice, confrontation, and Compulsory Process guarantee that a Criminal charge may be answered through the calling and interrogation of favorable witness(es), the cross-examination of adverse witness(es), and the orderly introduction of evidence, these basic rights are applicable to the State through the Due Process Clause of the Fourteenth Amendment essentially Constitutionalizes the right to present a defense in any adversary Criminal Trial, Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975). Applicant contends that the trial Counsel denied him the Constitutional right to raise the Vandetta issue, thereby violating his right to present a defense and entitling him a New Trial, see New Evidence at COD at 2-3,

The Applicant's Direct Appeal Counsel and Post-Conviction Appellate Counsel were deficient and caused fatal prejudice to the applicant, because it is reasonable to conclude that the applicant's post-trial efforts would have had a Materially different, favorable outcome if appellate Counsel had been effective, as required by Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984), and Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Pursuant to Simmons v. State, 419 S.E.2d 225 (1992). (If issue of Material Value could have been raised on Direct Appeal, but was not, a claim of Ineffective Assistance of Appellate Counsel is required on P.C.R.,

thus, Appellate Counsel from PCR denial is required to note that PCR Counsel failed by not raising Ineffective Assistance of Counsel on Direct Appeal. In this case, failure of Trial Counsel to conduct a thorough pre-trial investigation, including the interviewing of prospective witness(es) prior to trial (or prior to PCR, by implication), must be raised by appropriate appellant Counsel, failure to do so constitutes Ineffective Assistance of Appellate Counsel see Huffington v. Nuth, 140 F.3d 572, 580, - (4th. Cir. 1998).

Applicant has not had one (1) complete "bite" at the apple due to procedural irregularities, beginning with Newly Discovered Evidence, that Highlight the errors. The Court may grant the respondent's Motion for untimely or successive under State Statute See S.C. Code Ann. - §17-27-45 and §17-27-90. Applicant is entitled to Statutory and equitable tolling. The first sufficient reason why this Court should grant applicant's petition is S.C. Code Ann. §17-27-45 has three (3) exceptions provided. Section (A), (Under this statute) the applicant has one (1) year to filing. Applicant may by-pass this Section with a Claim of State or Government interference preventing filing; Section (B) applicant may demonstrate the novelty of a particular Claim that was not previously recognized or a right not in existence at the time of the State Court Trial and Section (C), if New facts arise that could not have been discovered through due diligence, also see Pace v. DiQuigilmo, 545 U.S. 1135, 125 S.Ct. 2931

Applicant presented New Evidence (that was discovered and presented within the Statutory limits), which goes to the central issue of guilt or innocence, This has a preferred position and is deemed the most deserving of relief, Stated another way, the applicant may present facts, that are not reflected in a record of the proceedings of a Trial on the issue of guilt. U.S. v. Senclemente - Bejarano, 861 F.2d 206, 211 (1988); U.S. v. Kazn, 576 F.2d 238, 242 (1978), A defendant in a Criminal proceeding / trial / has the right "to seek out the truth in the process of defending himself. Davis v. Alaska, 415 U.S. at 320, "Few rights are more fundamental than that of an accused to present witness(es) in his own defense. Chambers v. Mississippi, 410 U.S. at 302, upon this

First sufficient reason Newly Discovered Evidence is the base for a Subsequent application § 17-27-90. The CDD should not be granted in favor of the respondent, to do so, would be prejudicial and a denial of Due Process.

The Second Sufficient reason, the applicant in case in chief, filed January 9, 2012 against the respondent, a Motion for Entry of Default Judgement and a Motion for Summary Judgement. Applicant argues that these irregularities constitute a denial of due process. The United States Supreme Court does not impose on person's unlearned in the law the same high Standards of the legal art that [they] might place on the members of the legal profession Erickson v. Pardus et al, No. 06-7317, decided June 4, 2007 and Allard v. - United States, 352 U.S. 354 (1956).

Pursuant to S.C. Code Ann. § 17-27-70, S.C. Code of Law, provides that the State has thirty (30) days to respond by answer or motion. The State was untimely, and failed to respond within the allotted time, under this Statute, the respondent waived their right to defend this action. In determining whether a party is entitled to Summary Judgement, the record is viewed in light most favorable to the non-moving party U.S. v. Diebold, Inc., 369 U.S. 654, 655 (1962).

Last, of Sufficient reason's in response, PCR Counsel failed to Subpoena Witness(es), Applicant can not show Ineffective Assistance of Counsel when Witness(es) are not presented at PCR, PCR Counsel failed to raise Critical issues, therefore, presented no testimony or evidence regarding any issue and it is therefore, waived. A waiver is Under S.C. law a Voluntary and intentional abandonment or relinquishment of a known right Jangsik V. Fairway Oaks Villas - Horizontal Property Regime, 307 S.C. 339, 415 S.E. 2d 384 (1992), Applicant did not express or imply to P.C.R. Counsel to do so. P.C.R. Counsel failed to Amend P.C.R. pro-se application to include the Supporting grounds of Ineffective Assistance of Counsel, and that which appear in the present application, moreover, PCR Counsel failed to do so and did not raise same during the applicants evidentiary hearing. As a result, these grounds were not heard

or ruled upon, even though they could have resulted in the applicant being granted a new trial, or Sentencing.

As South Carolina law, the Supreme Court makes it Mandatory that PCR Counsel make sure that all available grounds are raised in PCR proceedings. After filing a pro-se post-conviction Application, and after being given a Court appointed Attorney / Counsel, a pro-se litigant cannot thereafter file any further pleadings, and any amendments to his application, must be made by Counsel see Hybrid Representation State v. Sanders, 264 S.E. 215, 237 S.E. 2d 53 (1977); Foster v. State, 298 S.C. 306, 379 S.E. 2d 907 (1989). Furthermore, if PCR Counsel does not amend the pro-se application, the applicant has no way to have all supporting grounds heard. The Claim of Ineffective Assistance of Counsel cannot be exhausted until an application for Post-Conviction Relief is filed. As a South Carolina litigant, applicant clearly has a right to effective assistance of trial Counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985); Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546 (4th Cir. 1991).

As a result, when an applicant is not assisted by a PCR Counsel in setting forth all grounds to support his Claim of Ineffective Assistance of Counsel in his initial application, applicant should not be barred thereafter from submitting a second application to include additional grounds (along with Newly Discovered Evidence and After-Discovered Evidence) for the Court to review.

CONCLUSION

For these foregoing reasons, the applicant respectfully requests this Honorable Court to deny the Respondent's Motion to Dismiss / Conditional Order of Dismissal and grant Applicants Evidentiary hearing.

Respectfully Submitted.

Noel Grady #307540
Noel Grady
B.R.C.I. Murray 212 B.
4460 Broad River Rd.
Columbia, S.C.
29210

February 1, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

Noel Gray #307590,) CASE NO. 2011-CP-02-02776

US.) CERTIFICATE OF SERVICE

State of South Carolina)

COMES NOW Noel Gray #307590, pro-se, do hereby Certify that a Original and a True Copy of Applicants Response to Respondent's Motion to Dismiss / Conditional Order of Dismissal has been sent properly addressed and postage Pre-Paid and deposited in the U.S. Mail addressed to the following parties.

1. Honorable Clerk of Court
Court of Common Pleas
P.O. Box 583
Aiken, S.C. 29802

2. Ms. Mary S. Williams
Asst. Atty. Gen. Office
P.O. Box 11549
Columbia, S.C. 29211

Respectfully Submitted
Noel Gray #307590
Noel Gray
Broad River Corr. Inst.
Murray # 212 B
4460 Broad River Rd.
Columbia S.C. 29210

Sworn and Subscribed before me

This 15th day of February, 2012

Susan H. Frye

Notary Public for South Carolina

My Commission Expires:

My Commission Expires

Mar. 15, 2018

RECEIVED

APR 16 2012

BRCI
MAILROOM

STATE OF SOUTH CAROLINA

County of Aiken

IN THE COURT OF COMMON PLEAS

Noel Gray # 307590

2011-CP-02-02776

2004-GS-02-1333/1334

vs.

) POST CONVICTION RELIEF (P.C.R.)

STATE OF SOUTH CAROLINA) (SUCCESSIVE APPLICATION AMENDMENT)

COMES NOW INTO THIS HONORABLE COURT, pro-se Noel Gray, #307590, Applicant Submitting that he filed a Second P.C.R. dated December 9, 2011 (Filed), pertaining to Newly discovered and After discovered Evidence pursuant to S.C.R.CIV.P Rule 60(b)(2) and S.C. Code Ann. §17-27-45(c); S.C. Code 71.1(e); S.C. Code Ann. §17-27-20 through §17-27-166.

The Applicant in this action contends that his Second P.C.R. Application should not be barred from this Honorable Court due to Successiveness, The Applicant's due process of rights and his Sixth and Fourteenth Amendment right to effective assistance of Appellate Counsel, where P.C.R. Counsel failed to subpoena witnesses; failed to properly Investigate and Research Applicant's Federal Interstate Agreement on Detainers Act Contract and be adequately prepared to bring this case to bar before this Honorable Court, with Material facts, Failed to obtain Discovery Rule 5 from Trial Counsel to see Newly Discovered and After Discovered Evidence that was withheld from Applicant; see Second P.C.R. # 2011-CP-02-02776, Failed to Argue States Loss of Subjectmatter Jurisdiction pursuant to Federal Law see Federal I.A.O.A Contract, And Failed to Amend Applicant's Pro-se post conviction application to include all grounds Supporting

Ineffective Assistance of Trial Counsel which appear in the present application, However, Post-conviction Counsel failed to do so and did not raise same during the Applicant's evidentiary hearing. As a result of the Applicant being a layman, he did not know how to present these claims in his pre-se application, or at the evidentiary hearing, and as a result, these grounds were not raised; heard; or ruled upon. Even though, they could have resulted in the Applicant being granted a new trial or Indictment's; Information's and Complaints dismissed with prejudice pursuant to the Applicant's Violated Federal I.A.D.A. Contract.

- LAW IN SUPPORT OF AMENDMENT -

South Carolina Supreme Court Rule 50(5) and 71.1(d) make it "Mandatory" that Post-Conviction Attorney's make sure that all grounds available are raised in Applicant's Post Convictions proceeding. After filing a Pre-se Post Conviction Application, and after being given an Court Appointed Attorney, "Bradley L. Boni Esq.", A pre-se litigant cannot thereafter file any further pleadings, and any amendments to his application must be made by counsel State v. Sanders, 269 S.C. 215, 237 S.E.2d 53 (1977); Foster v. State, 298 S.C. 306, 379 S.E. 2d 907 (1989). Thus, if post conviction Counsel does not amend the pre-se application, the applicant has no way to have all supporting grounds heard. See EXHIBIT #1-2, dated January 5, 2009, The Applicant sent a Rule 59(c) a Motion to Address all Issues to this Honorable Court, but in which due to having an appointed Counsel, she returned it, to Applicant to send to his attorney in which he did January 15, 2009. Applicant was appointed Bradley L. Boni Esq. on May 1, 2008, see EXHIBITS #3-4, December 18, 2008 Applicant wrote to P.C.R. Counsel trying to talk with Counsel in regards to his case, see EXHIBIT #6. But P.C.R. Counsel would not write back see.

Letters dated May 6, 2008 and October 20, 2008, but finally after six (6) 1/2 months Attorney finally writes back, but also see Line #5-6 he has never done or tried a C.S.C. case. And is not a criminal nor Trial lawyer. That his practice is limited to real estate and probate, in which prejudiced the Applicant to a Fundamentally Fair P.C.R. Action, due to the elements to this civil action Hearing is based on State and Federal law, Ineffective Assistance of Trial Counsel and a Criminal Conviction. Therefore, supported by Material Facts Counsel had no experience to bring this case to bar. EXHIBIT #5 P.C.R. Counsel came to see Applicant January 21, 2009. He had not ordered any transcripts, no discovery, no witnesses, But 12 days later Applicant was in his P.C.R. Hearing. February 2, 2009. Therefore, P.C.R. Counsel nor Applicant was adequately prepared to bring this case to bar according to the Rules and procedures.

Since State v. Carpenter, 277 S.C. 309, 286 S.E. 2d 384 (1982); and State v. Kornahrens, 290 S.C. 281, 350 S.E. 2d 180 (1986) prohibits South Carolina litigants from raising claims of Ineffective Assistance of Trial Counsel during their initial direct Appeal, the Post Conviction Proceeding must be viewed as the first Appeal as of right on that particular claim.

The South Carolina Supreme Court decision in Alice v. State, — S.C. — 409 S.E. 2d 392 (1991) holding that there is no Constitutional right to counsel in state Post Conviction proceedings is based on a far-stretched reading of the Supreme Court decision in Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed. 2d 539 (1987). The decision in Finley merely held that there is no Constitutional right to counsel in a State Court discretionary appeals after the appellate stage has been exhausted, Id. 107 S.Ct. at 1993-1994.

Because the claims of Ineffective assistance of Counsel cannot

be exhausted until an application for Post Conviction Relief is filed, South Carolina litigants clearly have a right to "effective assistance" Counsel in presenting their claims of Ineffective Assistance of Trial Counsel Cf., Evitts v. Lucey, 496 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d - 821 (1985); Coleman v. Thompson, ___ U.S. ___, 111 S.Ct. 2546, 2568 - (1991).

As a result, when a Applicant is not assisted by a Post-Conviction Attorney in setting forth all grounds to support his claims, of Ineffective of Trial Counsel in his initial application, "he should - not be barred" thereafter for submitting a Second application to include additional grounds for a court's review.

In Carter v. State, 393 S.C. 528, 362 S.E.2d 20 (1987), and again in Aice, Supra, the South Carolina Supreme Court cited Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Land v. State, 274 S.C. 243, 262 S.E.2d - 735 (1980), and South Carolina Laws Ann. § 17-27-90 for the General Proposition, that successive applications are viewed with disfavor and that the application/applicant has the burden of showing that a New ground for relief could not have been raised in a previous application.

However, Aice, Supra, does not give attention to the Court's decision in Case v. State, 277 S.C. 474, 289 S.E. 2d 413 (1982), which held that if the applicant meets the burden, a hearing must be afforded despite the successive nature of the application. The facts in Case established that Case had no attorney in his first application, and that it was highly doubtful whether, in point of fact, that he could have raised the appropriate arguments, Aice Supra, Id. - 409 S.E.2d at 394.

In a situation where a post conviction applicant is not assisted by his Post Conviction Attorney in properly amending his first application to include all grounds supporting and underlying a claim of Ineffective Assistance of Trial Counsel, and does not know of such grounds, or does not know how to raise them, and is barred from presenting pre-se pleadings in light of State v. Sanders, Supra, and Foster v. State, Supra; he must be seen to be "without Counsel" and in the same position as that of the applicant in Case v. State, - Supra, the Court under such circumstances should find that the Second application should be heard despite it's successiveness because the first application lacked, specificity, unless it can find that Applicant intentionally waived his rights to have the grounds stated in the subsequent application heard in the first. In which the applicant did not (see EXHIBITS ENCLOSED.)

If South Carolina litigants are entitled to appeal from denial of Post-conviction relief under Austin v. State, - S.C. -, 409 S.E.2d 395 (1991). If they can establish that they did not voluntarily waive their rights to appeal, then they should be allowed to file a subsequent application alleging that all grounds supporting a claim of ineffective Assistance of Trial Counsel were not presented in the first application due to Ineffective Assistance of Post Conviction Counsel, who in reality is not post conviction Counsel on such claims, but instead is an appellant attorney in the first Appeal as of right on that particular claim.

Also see Attached EXHIBITS TO SUPPORT CLAIMS!

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

In support of 2011-CP-02-02776 Post Conviction
Relief "Successive Applications Amendment" to show cause that
petitioner/Applicant is entitled to New P.C.R. and that Counsel
and Evidentiary hearing should be granted by this Honorable Court.

Noel Gray #307590

Applicant

VS.

STATE OF SOUTH CAROLINA

Respondent.

CERTIFICATE OF SERVICE

I Noel Gray #307590 certify that a True Copy of this Pro-Se
Amendment with attached EXHIBITS in this case have been submitted
to this Honorable Court by U.S. Mail, postage - Pre-Paid on this 16th day
of April, 2012.

Respectfully Submitted
Noel Gray #307590
Noel Gray #307590
Pro-Se Applicant

sworn and Subscribed before me

this 16 day of April, 2012

Eugene Keott

Notary Public for South Carolina

My Commission Expires: April 4, 2016

- CONCLUSION -

The Applicant contends that he should be granted Counsel and evidentiary hearing as in House v. Bell, 547 U.S. ~ 518, 126 S.Ct. 2064 (2006) where "new reliable evidence" that would have a grave impact upon reasonable jurors, Id. at 538, See also, Schlup, Supra, and Herrera, Supra, should be granted.

Respectfully Submitted
Thel E. Gray Jr. #302550
 B.R.C.Z. Murray 212-B.
 4460 Broad River Rd.
 Columbia, S.C.
 29210

Sworn and Subscribed before me

this 16 day of April, 2012

Eugene Keith Jr.

Notary Public for South Carolina

My Commission Expires April 4, 2018

My commission Expires: _____

January 6, 2009

Dear Madam Clerk,
Enclosed is my Motion to Address
all Issues; Please Clock Stamp and Return
(1) Copy back to me. Please

In Kind regard
I Remain.
Noel Gray # 307590
Noel Gray
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, S.C.
29210

Mr. Gray - Since you have an
appointed attorney, all pleadings
must be filed by him. Please
forward any and all pleadings
to him.

Thank you.
Deputy Clerk

08-CP-02 - 734

SENT TO COUNSEL JAN. 15, 2009

(EXHIBIT # ~~249~~ 1)

08-CP-02-734

STATE OF SOUTH CAROLINA
COUNTY OF AIKENIN THE COMMON PLEAS COURT
FIRST JUDICIAL CIRCUITNOEL GRAY #307590
Appellant

Case No. 04-GS-02-1333

and

Case No. 04-GS-02-1334

vs.

MOTION TO ADDRESS

STATE OF SOUTH CAROLINA
Respondent

ALL ISSUES

Now comes the Applicant Noel Gray #307590, by and through his Court Appointed Attorney, who ask this Honorable Court to require the Attorneys involved in this Post Conviction Relief Action and any Amendment thereof, to be Meticulous in the preparation of any "Order" prepared in this matter.

Specifically, the Appellant request that each and every issue raised within the Post Conviction Relief Application and any Amendment thereof, at the hearing, to be addressed in the "Order" of the Court to be issued at the conclusion of the Evidentiary Hearing in this matter.

The Applicant request this Motion pursuant to S.C. Code § 17-27-80, citing; Pruitt v. State, 423 S.E. 2d 123 (1992); Bryon v. State, 493 S.E. 2d 500 (1997).

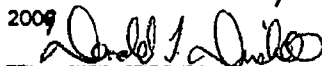
Wherefore Applicant request the Motion be "Granted"

Respectfully Submitted,

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 6TH DAY OF January

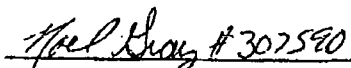
2009



NOTARY PUBLIC

STATE OF SOUTH CAROLINA My Commission Expires

MY COMMISSION EXPIRES August 25, 2015

 #307590

Noel Gray #307590

B.R.C.I. Murray B-224

4460 Broad River Road

Columbia, S.C. 29210

(EXHIBIT # ~~2339~~)

STATE OF SOUTH CAROLINA

County of Aiken

Noel Gray # 307590

Petitioner

vs.

STATE OF SOUTH CAROLINA

Respondent

IN THE COURT OF
COMMON PLEAS

Second Judicial Circuit

ORDER OF APPOINTMENT
FOR LEGAL COUNSEL

Case Number 2008-CP-02-734

The Petitioner contends that he or she is indigent and in need of services of an attorney as contemplated by law. THEREFORE, the Petitioner is appointed, Bradley L. Boni, Attorney-at-Law, for representation in the above captioned matter pursuant to Rule 608, SCACR.

This 1st day of May, 2008 at 3:00 P.M.

Liz Godard by Austin Smith
Clerk of Court

Attorney Contact Information

Bradley L. Boni

Name

Address

Aiken, SC 29802

City, State, Zip Code

Phone Number

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

MAY 01 2008

Liz Godard
C.C.C.P. & G.S., Aiken County, S.C.Austin Smith
Deputy Clerk

SCCA 267 (2/04)

(EXHIBIT # 3)

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE SECOND JUDICIAL CIRCUIT
THE COURT OF COMMON PLEAS

Noel Gray #307590

Petitioner,

DOCKET NO. 2008 -CP- 02- 734

VS.

APPOINTMENT OF COUNSEL
RECOMMENDATION

State of South Carolina

Respondent.

FILED 5-1-08

[Signature]
C.C.P. & G.S.

[Signature]
Deputy Clerk

PCR FILED April 18, 2008, by [Signature]
Date Int.

FORWARDED COPY TO ATTORNEY GENERAL, SOLICITOR, GENERAL SESSIONS,
AND PETITIONER April 18, 2008 by [Signature]
Date Int.

AFTER REVIEWING THE POST CONVICTION RELIEF APPLICATION, COUNSEL:

☒ SHOULD BE APPOINTED, FOR THE REASON LISTED BELOW

☐ SHOULD NOT BE APPOINTED, FOR THE REASON LISTED BELOW

REASON: Timely Filed; Raises valid PCR issues

4/24, 2008
Date

[Signature]
ATTORNEY GENERAL

(RETURN TO: AIKEN COUNTY CLERK'S OFFICE P.O. BOX 583 AIKEN, SC 29802)

THE APPLICANT IS HEREBY, _____ COUNSEL.

GRANTED / DENIED

5-1, 2008
Date

[Signature]
PRESIDING JUDGE

(EXHIBIT #4)

DEFENDANTS EXHIBIT
#1 p.1.
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Operations
ORDER TO REPORT

12 days

SCDC # 307 590	Name Noel Gray	Area HU-224
REPORT TO <u>Operation</u> AT <u>0:4:30 AM 1-21-09</u>		
Bring All Belongings ☐ Bring State Clothing ☐ Bring Nothing ☐		
Atty Visit February 2, 2009		
Date 1-15-09	Signed J. Boyd	
Date 1/19/09	Inmate's Signature Noel Gray	
Date 1/19/09	Staff Member's Signature [Signature]	

SCDC 19-45 (Rev. August 1997)

(EXHIBIT #5)

Page # 2

BRADLEY L. BONI
Attorney at Law
208 Newberry Street, NW
Aiken, South Carolina 29801

Mailing Address
Post Office Box 652
Aiken, South Carolina 29802

Telephone: (803) 644-4460
Fax: (803) 644-4469

December 18, 2008

Noel Gray #307590
Broad River Correctional Institute
4460 Broad River Road
Columbia, SC 29210

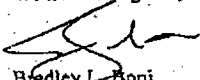
Re: Case Number 2008-CP-02-734

Dear Mr. Gray:

- 1) I am in receipt of your letters dated May 6, 2008, and October 20, 2008, as well as your
- 2) Christmas card. Thank you for the thoughtful card, and I must apologize for having not
- 3) written sooner. In your first letter you asked how long I've been practicing law and if I
- 4) have ever done a C.S.C. case. To answer, I have been practicing 8 years, and I have
- 5) never tried a C.S.C. case to which I'm assuming you mean a Criminal Sexual Conduct
- 6) case. I am not a criminal nor trial lawyer. My practice is limited to real estate and
- 7) probate. As soon as I can come down to Columbia, I will do so in order that we may
- 8) meet in person. In the meantime, please do not hesitate to contact me in the future.

With Best Regards,

100


Bradley L. Boni

(EXHIBIT 6)

6

P.C.R. Counsel deprived the defendant of a fair and constitutional Post Conviction Relief Action by the followings:

On May 1, 2008, the Attorney General appointed Bradley L. Boni Attorney at Law and stated that the defendant filed valid P.C.R. issue's in which was contained in the defendants' Brief that he filed. (See Page #9 of the Attachment).

On May 6, 2008, and October 20, 2008, the defendant wrote to the Attorney requesting information on his ability to represent the defendant in this P.C.R. action. Then on December 18, 2008, the Attorney wrote the defendant (7 months later). The Attorney stated in his letter to the defendant that he (the Attorney) is not a criminal lawyer. The Attorney further stated that he was a "Real Estate and Probate Attorney". He even went further and stated that he has never done a C.S.C. case.

So then finally, on January 21, 2009 the Attorney came to see the defendant at the Broad River Correctional Institution in Columbia South Carolina. Where the defendant is housed and serving a natural life sentence for a crime that he never committed. And in which he (the defendant) is still fighting.

The Attorney has filed no motions or obtained any discovery, transcripts, or anything pertaining to the defendants case. The defendant has had to supply the Attorney with his own personal documents and transcripts. So that the Attorney can study the defendants case. The 12 days later on February 2, 2009, the defendant had his P.C.R. hearing. Then on April 6, 2009, the defendants P.C.R. was "Dismissed with Prejudice".

Also during the defendants P.C.R., the defendant informed the Honorable Court that he wrote the Honorable Court on the "returned letter dating January 10, 2005", before the trial by jury on February 2, 2005. Concerning the defendants Trial Attorney and her misconduct, as well as Trial Attorney's Boss Wallis Alves on January 7, 2004, about Attorney's misconduct. Defendant also filed a motion to address all issues to the Clerk of Court on the 5th day of January in which she returned it back to the defendant, and told him that he had to send it to his Attorney to file in Court in which he did not.

So by this misrepresentation and misconduct and incompetency. Deprived the defendant of a full and fair P.C.R. by not argueing his Brief that was filed. And picking 3 issues and running with it the way that he wanted too. This denied the defendant his constitutional right to be heard. Therefore the Petitioner would respectfully pray that this Honorable Court will grant the Petitioner a new P.C.R. with adequate counsel, and allow the Court to (Ex. #7) address all the issues that are in the defendants Brief, and due to the

4d1rev00027 CMC-TER Date Filed 08/25/09 Office before Trial Counsel
 and the Court denying the defendants P.C.R. This is unconstitutional and
 fundamentally unfair and bias, and prejudiced to the defendant. See case
 law White vs. State, 263 S.C. 110, 208 S.E. 2d 35 (1974).

Respectfully Submitted,

SI Marla J. #307590
 Noel Gay, # 307590

Sworn and Subscribed before me on this
2nd day of July 2009.

[Signature]
 Notary Republic of South Carolina

My Commission Expires
 August 25, 2015

My Commission Expires.

NOTE) The defendant also submit that "Document's To Support Claim"
 are hereby enclosed within this packet.

MARLAR U. STATE VIOLATION OF P.C.R. Counsel.

EX.# 8

I, NOEL GRAY, # 307590, HEREBY CERTIFY that a true and complete copy was deposited in the United States Mail on this 2 day of July 2009.

Respectfully Submitted,

SI Noel Gray #307590
Noel Gray, # 307590

Sworn and Subscribed before me on
this 2nd day of July 2009.

[Signature]
Notary Republic of South Carolina
My Commission Expires
August 26, 2015
My Commission Expires.

The Honorable Clerk,

I the Defendant would like to respectfully request
to have a clock stamped copy sent back please.

Respectfully Submitted
Noel Gray #307590

(GX.#9)

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

APPEAL FROM AIKEN COUNTY
DOYET A. EARLY, III P.C.R. JUDGE

NOEL GRAY,

APPELLANT.

VS.

THE STATE,

RESPONDENT.

NOTICE OF APPEAL

- CASE NO: 2008-CP-02-0734 -

FILED 9-15-10
Liz Godard
C.C.P. & G.S.
Anita Knoepfle
Deputy Clerk 8:00

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

SEP 16 2010

Liz Godard
C.C.P. & G.S., Aiken County, S.C.
Anita Knoepfle
Deputy Clerk

~~(25-3)~~

(EX.#10)

The Pro-Se appellant submits this "NOTICE OF APPEAL" under Rule 59(e), SCRCP, and Rule 221, SCACR, to the Aiken County Court of Common Pleas. A rehearing in the appellants "Post Conviction Relief (P.C.R.) should be granted" and issued for the reasons that he was not afforded a full and fair "Opportunity to develop all meritorious issues, including most especially Constitutional matters, his P.C.R. Attorney neglected to file a Rule 59(e) Motion for P.C.R. Judge to address each issue raised in the appellants "Pro-Se Brief" at the Evidentiary Hearing, and appointed attorney "failed" to investigate and/or develop factual issues and matters.

And the Aiken County Grand Jury indicted appellant for C.S.C. w/minor 2nd. degree and C.S.C. w/minor 3rd. degree. At the Appellants Trial he was tried for (2) two counts of C.S.C. w/minor 2nd. degree, and was sentenced to Life without the Possibility of Parole, based on the South Carolina Recidivist Statute of S.C. Code Ann. 317-25-45.

The S.C. Court of Appeals affirmed the Conviction on Direct Appeal.

The Appellants Trial Attorney was ineffective for failing to object to appellants LWOP sentence under the 317-25-45 in order to preserve the issue for appellate review because the prior conviction used to enhance sentence did not qualify as a most serious offense under South Carolina Criminal Sexual Conduct offense.

(1)

~~EXHIBIT A 100-2~~

At Sentencing, the State sought LWOP enhanced sentencing due to appellants "Prior Conviction" emanating from the State of Georgia because "based on the elements of that particular offense in Georgia it would be classified as Criminal Sexual Conduct and a most serious offense ROA p. 254, Lines 4-17. Trial Counsel remained silent and failed to object to the use of the prior Georgia conviction as an enhancer in support of an LWOP sentence, the appellant was sentenced to Life imprisonment.

Trial Judge was also in violation of Due Process under the 6th and 14th Amendments of the Great United States Constitution for failing to protect the appellants equal Protection of the Law Clause and under U.S.V. BRECKENRIDGE: 93 F.3d, 132 (4th Cir. 1996). Under the Evidentiary Hearing Rule, Remanded case for evidentiary hearing to determine whether prior offenses "were related" but declared that if they are not, Trial Counsel was ineffective for failing to raise this issue to prevent defendant from being sentenced as a Career Criminal. Ordered Court to "Vacate Sentence" and to sentence if prior offenses related.

The Appellants P.R. was denied by Judge Early of the Aiken County Court of Common Pleas. And Appealed to S.C. Supreme Court was timely filed.

This Notice of Appeal follows.

(2)

~~EXHIBIT A-100-3~~

After filing his P.C.R. in the Aiken County Court of Common Pleas on April 18, 2008 appellant was appointed Bradley L. Boni, Esq. of Aiken County, to represent him on P.C.R.

Mr. Boni sent appellant a letter 7 months later on December 18, 2008 stating "I have never done a C.S.C. case, and that he was not a Criminal Attorney". Mr. Boni was appointed to appellants P.C.R. on May 1, 2008. From Boni's visit until evidentiary hearing in Aiken County "12 days".

On January 21, 2009 Mr. Boni came to Broad River Corr. Inst. to consult with appellant about P.C.R. without any Discovery Material, Transcripts or other records, only with what appellant filed with Clerk of Court.

Appellant sent in a "Motion to ADDRESS ALL ISSUES" pursuant to Rule 59(c) SCRPC, to the Court of Common Pleas on January 5, 2009. This was returned to appellant to be sent to his attorney, Mr. Boni. Mr. Boni neglected to submit this Motion, despite of Appellant's request for him to do so.

The appellants P.C.R. was fundamentally unfair because he was denied Due Process of Law not being able to completely demonstrate the issues that were raised in appellants Pro-Se Brief and through testimony or Physical Evidence. The appellant is entitled to "minimal Due Process" of Law because there is a Liberty interest in the P.C.R. according to Paul v. Davis 424 U.S. 693 (1976).

Attorney Boni did not research any issues raised on P.C.R. Appellant had submitted issues relying on relevant case law.

(3)

~~CONFIDENTIAL~~

The appellant was denied Substantive Due Process at his Jury Trial because all elements of each crime were not proven beyond a reasonable doubt, as held by In Re: Winship: 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); and In Re: Beckham: 365 S.C. 637, 620 S.E.2d 69 (2005). This was easily attainable win for appellant but was not investigated and set up for P.C.R. witnesses were not interviewed and called to the Evidentiary Hearing the Pre-Trial Discovery of Rule 5, S.C.R. CRIM.P., was not brought to the P.C.R., or Medical Evidence such as D.N.A Records was not investigated in P.C.R.

In appellants Trial by Jury App.p. 154 Lns. 4-25 and also App.p. 155 Lns. 1-14 appellants attorney takes a 3rd. degree C.S.C w/minor and turns it into a 2nd. degree by her harmful Motion Request. The Honorable tells on her "See App.p. 155 Lns. 12 Trial Court States "You actually want that"? the appellant lived with the alleged victim and her Mother from July to November 2001 and from March to September 2002. Therefore; the appellants sentence is a "Flagrant Due Process violation" and a "denial of fundamental fairness" according to Lisenba v. California: 314 U.S. 219, 62 S.Ct. 280, 86 L. Ed. 166 (1942). Therefore, the 3rd degree offense is lesser than a 2nd degree and cannot be enhanced unless rebutted See, e.g. S.C. CODE ANN. § 17-19-20 (1985); and U.S. v. Young: 376 A.2d 809 (1977); Russell v. U.S.: 369 U.S. - 749, 82 S.Ct. 1038, 8 L. Ed. 2d 240 (1962)

(4)

~~CONFIDENTIAL~~

Because there was insufficient evidence to prove the indicted offenses, the resulting Convictions Fatally Varied from offenses that petitioner was charged with under BERGER V. U.S.: 255 U.S. 22 (1935). There was no chain of Custody of the minimal Physical Evidence, available for use in this prosecution; Trial Counsel was negligently ineffective for ignoring the "Corpus Delicti - Rule" of Opfer v. U.S.: 348 U.S. 84, 75 S.Ct. 158, 99 L. Ed 101- (1954); and Sennitt V. Blackburn: 795 F. 2d 1237 (5th Cir. 1986);

Also during P.C.R. hearing, petitioner testified that Trial-Counsel erred in failing to Challenge and object to the State's use of the Georgia Prior Conviction because prior did not contain all the elements required for C.S.C. as a most Serious offense App. p. 273, lines 11-13; App. p. 274, Lines 9-14. P.C.R. argued that the indictment on the prior alleged that petitioner performed sodomy involving his mouth and the victim's vagina, but neither that Georgia Statute nor the prior addressed the issue of Skin to Skin Contact as required by S.C.C.S.C. Statutes. App. p. 279, Lns. 20- p. 281, Ln. 3. P.C.R. Counsel argued that even though this issue was argued on Direct Appeal, the case was dismissed on appeal because "Trial Counsel did not raise this issue at sentencing" which meant the issue was not preserved for appellate review. App. p. 282, Lns 5-9. In the appellate opinion, the court of appeals did not affirmatively find that the prior did not meet the elements of our State Criminal Sexual Conduct

(5)

~~CONFIDENTIAL~~

Statutes. Rather, it appeared that the issue was not reviewed on Appeal because it was not properly preserved as an issue via objection for appellate review. Trial Counsel testified that the elements for the Georgia Conviction matched the Criminal Sexual Conduct Statutes. App.P. 284 Lns. 12 - App.P. 285 - Ln. 12.

In Georgia, a person is guilty of Sexual Misconduct even if contact occurs while the victim wears clothing. Brownlow v. State: 544 S.E. 2d 472 (Ga. App. 2001); Holland v. - State: 434 S.E. 2d 808 (Ga. App. 1993). In South Carolina, Sexual Battery involves skin to skin contact, S.C. CODE ANN. § 16-3-651 (h) State v. Morgan: 352 S.C. 359, 574 S.E. 2d. - 203 (2003). Here, the Georgia indictment did not allege that appellants tongue touched the victims vagina. Thus, in light of the consideration of the elements, the Georgia prior did not constitute a C.S.C. Serious offense worthy of an enhancement trigger per LWOP under S.C. Code Ann. § 17-25-45. Compare State v. Lindsey: 335 S.C. 15, 583 S.E. 2d 740 (2003), where the court held that the defendant's prior rape conviction did not qualify as a most serious offense with respect to our State Criminal Sexual Conduct Statutes because there was no indication that the prior rape contained the requisite element of force, Also see Trial Courts abuse of Discretion and law when Trial Counsel filed her Mistrial Motion concerning Prosecutorial Misconduct and using Unfair Prosecutorial Tactics App.P. 137 Lns. 14 - 23 and App.P. 253 Lns. 4 - 13 and also why would Trial Court stop a Trial concerning Prosecutor

(6)

~~CONFIDENTIAL~~

Misconduct See App.p. 137 lns. 5-7 - ln. 15-19, App.p. 138 lns. 3-11, and then say "But any way, I'm going to allow it. I don't know if it's of that much importance any way. This is a very serious violation of Equal Protection of the Law Clause. This was very prejudicial to the appellant. And it is fundamentally unfair and shocking to the Universal Sense of Justice.

As a rule, unless an objection is made at the time the evidence is offered, and a final ruling is made, the issue is not preserved for review. State v. Rice: 375 S.C. - 302, 652 S.E. 2d 409 (Ct. App. 2007); i.e. via aggravated coercion under S.C. Code Ann. § 16-3-652 and 653. The Lindsey court reversed LWOP sentence and remanded for resentencing.

Therefore, trial counsel's failure to research or investigate prior conviction and willingness to accept the States version of facts and failed to file any motions on Evidentiary of enhancement; U.S. v. Breckenridge: - 93 F. 3d 132 (4th Cir. 1996), And relied on the States version of facts and not based on her own reasonable investigation. Calls Counsel's representation is serious question of Inadequacy - U.S. v. Matos: 905 F. 2d 30 (2nd Cir. 1990). And failing to object to appellants LWOP sentence under 317-25-45 because the Prior Conviction used to enhance sentence "did - not qualify" as a Most Serious offense in light of South Carolina's C.S.C. Statutes. Trial Counsel's error in failing to preserve the issue for Appellate Review violated Due Process

(7)

~~CARROLL # 100-8~~

at Sentencing. Under the 6th and 14th Amendments of the United States Constitution and Article 1 § 14 of the South Carolina State Constitution.

And also on February 2, 2009 P.C.R. Counsel questioned appellant about a Continuance that was filed by appellants Counsel Kelly Perkins Brown, October 29, 2004. By Honorable Reginald Lloyd of the 2nd. Judicial Circuit. Kelly Perkins Brown, stated in App.p. 283 Lns. 16-25 the State was prepared in October. Then in Ln. 22 She felt it was to his best interest for filing a Continuance. And the Appellant agreed for her to seek a Continuance Ln. 25. But during Mr. Boni's examination of Appellant App.p. 275 Lns. 18-25 the appellant never consented to a continuance, nor did he appear in Open Court on Official Record or Signed any document to give approval for this Continuance that is required by Federal Law under U.S. v. Crawford 982 F. 2d. 199 (6th. Cir. 1993) and also see App.p. 279 Lns. 2-11, the appellant testified that he filed correspondence to the Honorable's Office and to Kelly Perkins Brown, Boss Wallis Alver and filed grievances on her as well. Concerning her violating the appellants I.A.O.A. under Federal Authorities. And also pursuant to SCACR, Rule 203, SCRPC 71.14g South Carolina Appellate Court Rule 227 and Austin v. State - 404 S.E. 2d 395 (1991) Appointed Counsel Boni failed to file a "Motion of Reconsideration" or "Motion to Alter or Amend, Honorable Early's Order of Dismissal" dated on April 6, 2009 -

(8)

~~EXHIBIT 108-9~~

THE STATE OF SOUTH CAROLINA
SOUTH CAROLINA SUPREME COURT

APPEAL FROM AIKEN COUNTY
DOYET A. EARLY III
CIRCUIT COURT JUDGE

THE STATE

RESPONDENT

V.

NOEL GRAY # 307590.

DEFENDANT

Sept. 30 - 2009

PRO-SE AMENDMENT TO SUBJECT
MATTER JURISDICTION ○○○○

NOEL GRAY # 307590

MURRY # D12

Broad River Corr. Inst.

4460 Broad River Rd.

Columbia, S.C. 29210

(DEFENDANT)

(EX.# 11)

~~(EX.# 11)~~

EXHIBIT #

(INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLANT COUNSEL)

Trial Counsel erred seriously by her "UNCONSTITUTIONAL, and ILLEGAL, DIRECTED VERDICT MOTION" in (Tr.p. 153 Ln. 14 / Tr.p. 157 Ln. 18), in which was in violation of Due Process and Trial Counsel deprived the defendant of A FAIR AND CONSTITUTIONAL TRIAL by Jury and acted as a Second Solicitor to enhance the degree of an offense to Lesser to Greater in severity "Very Harmful" see: Rickman v. Bell: 131 F.3d 1150 (6th Cir. 1997) AFFIRMING 864 F. SUPP. 686 M.D. TENN. 1994

Prejudiced presume because "Trial Counsel did not serve as advocate and showed contempt for his client, such as he was a "Second Prosecutor" and the defendant would have been "Better Off" to have been merely "Denied Counsel". Defense Counsel presented the most damaging evidence in the case.

Defense Counsel made her Directed Verdict Motion as to all charges as the Defense Stated. The State could not and did not "Produce" any "Credible evidence" by which the State could find the defendant "guilty" of the charges beyond a reasonable doubt. "Defense was correct there". However, she further requests the Court would move in the form of a "Jury Charge" request, that the Court would Direct a Verdict to "(1) One element", that the defendant was not in a "Position of Authority" or "Custody". (Constitutional Question #1) Why would a defense Attorney change a Lesser offense to a Greater offense "Turning a 3rd. degree C.S.C. w/minor into a 2nd. degree". This is in violation of Strickland v. Washington: 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed. 2d. 674, 692 (1984) and Butler v. State: 256 S.C. 441, 334 S.E. 2d. 813 (1985)

(1) Exhibit 2

also see Cherry v. State: 300 S.C. 115, 386 S.E. 2d. 624 (1989).
 1 And the defendant was not reindicted before the Grand-Jury on the increase of Severity on Lesser to Greater offense Indictment NO: 2004-GS-02-1334. This in general is Very Harmful error, by Defense Attorney. How ever, "this was a Very Unusual Motion as well"... The Trial Court does and the State agrees to exclude that element to the Jury, Then the Court "Denies the Motion" on the rest of the Charges. Harmful Error by Trial Judge. Denying the defendant his "Constitutional Rights" to "Due Process" and denies the defendant Equal Protection of the Law" in which I the defendant is "Intituled TO". Due to The Grand Jury Indictment on the August 5th Term of 2004 C.D.R. CODE: 397 NO: 2004-GS-02-1334 for S.C. Code of Law § 16-3-655(3) as on warrant and Indictment for Criminal Sexual Conduct on a - Minor 3rd. degree. That there was "plenty" of evidence to support the Charges and under the provisions of (State v. Johnson: 334 - S.C. 78, 512 S.E. 2d. 795 (1999) This was very harmful error by Trial Judge. In this case, the State has to prove every element charged in the Indictment beyond a reasonable doubt.
 C.S. § w/minor 3rd. degree" § 16-3-655(3) "Sexual Battery" - "Penetration" how ever slight. Intrusion. The Law requires the State to prove the elements of the offense. "Not a Testimony" "Word of the Alleged Victim Alone" as Appellate Attorney E. [REDACTED] D. [REDACTED] Stated in letter to the defendant on the 16th. day of February 2006. But if Testimony is relevant to this case. The defendant relies on (Tr. p. 120 Ln. 8 and Tr. p. 121 Ln. 14)
 Doctor B. [REDACTED] "Professional Medical Expert" States Witness, Testimony, that the Physical Examination on the Alleged victim

EXHIBIT # [REDACTED]

(2) [REDACTED]

was all "normal". NO ABRASIONS, NO BRUISES, NO SCARS, or any Abnormalities that would suggest any Sexual Assault taken place. Even the alleged victims Rape kit was negative. No D.N.A. Therefore, the "Professional Medical Expert" a Doctor who Testified for the states behalf, plainly Stated: There was NO Signs of Sexual Battery however slight.

This was Judicial Misconduct and also serious descretion clause and error of Law by Trial Judge. There was no Credible Evidence to support the remaining essential elements beyond a reasonable doubt. (Tr.p. 153 Ln. 14 / Tr.p. 157 Ln. 18).

Defense Counsel renewed her Directed Verdict Motion and preserved it for appellate review (Tr.p. 161 Ln. 18 / Tr.p. 162 Ln. 18)

And again it was "Denied" by Trial Court.

Closing Arguments by Solicitor Chandler, there was "No" evidence to prove what the State is telling the Jury is facts. The only evidence produced by the State was Conjecture and Suspicion. By using Professional Medical Experts to bolster the Credibility of the alleged victims testimony State v. Rogers: 293 S.C. 505; 362, S.E. 2d. 7 (1987) In which deprived the defendant of a Fair and Constitutional Trial by Jury See Dr. — B. — Testimony A Forensic Evaluator and Trainer for the Assessment Resource Center in Columbia, S.C. "States witness" (Tr.p. 130 - 152) This was in fact Prosecutorial Misconduct and Using Unfair Prosecutorial Tactics. And under Smith v. — Wainwright: 777 F. 2d. 609 (11th Cir. 1985) Trial Counsel's "failure" to move to suppress a Confession can be extremely prejudicial and constitute ineffective Assistant of Trial counsel where the Confession is Provided for the Primary —

EXHIBIT # [REDACTED]

(3) [REDACTED]

[REDACTED]

evidence to support the States Case See (Tr.p. 136 Lns: 12-14)
 Tr.p. 137 Lns: 5-7 / Lns: 15-19 / Lns: 24-25 / Tr.p. 138 Lns: 3-11 /
 Tr.p. 139 Lns: 5-17 (Important Lns: 7-8) Tr.p. 140 Lns: 1-6 , The
 Trial Judge is full aware of this UnConstitutional Error of
 Law in his Court, that Violated the Defendants Constitutional
 Rights to a Fair and Constitutional Trial by Jury, so why did
 Trial Judge deny the move for a New Trial by attorney
 of the defendant (Tr.p. 253 Lns. 4-13). And also the confession
 of the alleged Victims Mom ~~L. B.~~ (Tr.p. 32 Lns: 20-25)

In Opening Statements by Solicitor ~~C.~~ in which was
 Prosecutorial Misconduct and Trial Counsel was also Ineffective
 for allowing ~~L. B.~~ Testimony to be used as a Smoke
 Screen to enflame the Jurys Minds (Seehan v. State of Iowa:
 37 F.3d. 389 (8th. Cir. 1994). Trial Counsels failure to object
 to "highly Prejudicial remarks" made by the prosecutor during
 opening arguments, deprived the defendant of a Fair and -
 Constitutional Trial and constitutes Ineffective Assistance -
 of Trial Counsel, also Derived from Inconsistent Statements
 that the State vouches the Credibility of Witnesses (Tr.p. 163 -
 Lns: 22 / Tr.p. 164 Ln. 8) This prejudice of the Inconsistent
 Statements given as consistent (Highly Prejudicial) Defense
 Counsel makes her late objection and a Bench Conference
 is held, but the arguing of facts "not in evidence" continues
 by the State, Without further objection (Tr.p. 165 Ln. 2/4)
 (Tr.p. 166 Ln. 20) Bolstering these inconsistent Statements
 (Tr.p. 167 Lns: 9-12) In the Directed Verdict Motion, the court
 granted that the defendant was not in Position of Authority -
 or custody. Very Prejudicial again. However, the State

(H) ~~XXXXXXXXXX~~
 EXHIBIT # ~~XXXXXXXXXX~~

brings these elements out in his Closing Arguments (Tr.p. 165 lns: 8-23)

In which was very prejudicial to the defendant. Trial Counsel was Ineffective for failing to object to this Prosecutorial Misconduct and also a violation of the Motion that was granted by Trial Court "In which was (UnConstitutional) and Bias towards the defendant.

See also Inconsistent as Consistent References -

(1) Minor in Alleged Victim (Tr.p. 78 lns: 10-20) Tr.p. 79 lns: 1-3)

(Tr.p. 81 lns: 12-22) Tr.p. 82 lns: 1-18) DIRECT EXAM)

(Tr.p. 83 lns: 1-25) Tr.p. 84 lns: 3-4) lns: 8-11) 15-18) 19-25)

(Tr.p. 85 lns: 1-25) Tr.p. 86 lns: 1-25) Tr.p. 87 lns: 1-20 VANDETTA -

Citing: State v. Paul Schmidt, Appellant No: 22511 Supreme Court of South Carolina March 31, 1986, Defendant was convicted in the General Sessions Court, Horry County, Paul M. - Moore, Special Circuit Judge, of Criminal Sexual Conduct with a minor in (1st) First degree, and he appealed. The Supreme Court, Harwell, J, held that evidence concerning hard feelings between child's family and defendant's family was relevant, Reversed and Remanded -

Li B. Alleged Victims Mom / Tr.p. 42 lns: 12- /

(Tr.p. 46 lns: 10-13) lns: 20-22) Tr.p. 49 lns: 8-9) lns: 15-25)

(Tr.p. 50 lns: 1-10) 11-19 see VANDETTA) (Tr.p. 51 lns: 12-14 Perjury)

(Tr.p. 52 lns: 1-25) Tr.p. 53 lns: 1-3 See Tr.p. 42 lns: 10-12)

(Tr.p. 53 lns: 17-25 see # 23 / Attorney George B. [REDACTED])

whom Li B. and M. W. [REDACTED] (Tr.p. 88-99) - Purchased for \$3,000.00 and got the defendant out of Jail on a Technical Violation Failure to Report and Pay Restitution In Brunswick, Georgia see Letters dated on the

(5) [REDACTED] [REDACTED]

EXHIBIT # [REDACTED]

22 day of November 2001, C [REDACTED] B [REDACTED] (Tr.p. 85 lns: 12-25)
 L [REDACTED] B [REDACTED] (Tr.p. 54 lns: 10-25) and M [REDACTED] W [REDACTED] (Tr.p. 97 lns: 7-11)
 in which from November 13, 2001 until March 26, 2002, The defendant
 was 4 1/2 hours away in the Glynn County Detention Center in
 Brunswick, GA. § L [REDACTED] B [REDACTED], M [REDACTED] W [REDACTED], and M [REDACTED] wife L [REDACTED]
 B [REDACTED], W [REDACTED] came and picked the defendant up from Jail and took
 him to Georgia Regional Hospital on March 27, 2002 (and then returned the defendant back to 1078 Madison Ave. New-
 Ellenton, S.C. (M [REDACTED] W [REDACTED]) residence, Trial Counsel was also
 ineffective for failing to Subpoenaing the Attorney who would
 have substantially Corroborated the defendants testimony
 Material (Capps V. Sullivan; 921 F. 2d 260 (10th Cir. 1990),
 and also Trial Counsel knew that the evidence presented at
 trial supported an instruction for a lesser included Offense
 of either Ludac to a Minor or Assault and Battery, but
 deliberately failed to request the error, because Trial Court
 and Prosecution failed to provide the Lesser Included Instruction.
 Counsels' entention was to create reversable error. This
 type of Conduct on behalf of counsel constituted Ineffective-
 Assistance of Trial Counsel. (Taylor V. Starnes; 650 F. 2d 38 -
 (4th Cir. 1981). Trial Judge in (Tr.p. 155 lns: 12-14) in Directed
 Verdict Motion to Indictment 1334, that the defendant was not
 in Position of Authority or Custody and Trial Judge states - "You
 actually want that? that the only thing was that he was older.
 knew that this UnConstitutional and Illegal Motion was
 not right. He was full aware of her Ineffectiveness and should
 not have "granted" that motion. Trial Judge denied the Defendant
 a Fundamentally Fair and Constitutional Trial by Jury.

(6) [REDACTED] [REDACTED]
 EXHIBIT # [REDACTED] [REDACTED]

(TRIAL COURT ERROR OF LAW)

Constitutional Question #1) Did Trial Judge J. [REDACTED] -
v. G. [REDACTED] of the 2nd Judicial Circuit Court of Aiken
County Deprive the defendant of a Fundamentally and Full
Constitutional Trial by Jury by Denying him of his
Due Process of Rights and Deny him Equal Protection of
the Law in which the defendant is Protected by?

The Trial Court Judge did in fact "Deny" the defendant of
a Fundamentally Fair and Constitutional Trial by Jury and
Deny him of Equal Protection of Law by Serious Abuse of
Discretion and Abusing his Power of Authority by the following:

Trial Judge stopped the Trial in Direct Exam by Solicitor
B. [REDACTED] and Dr. B. [REDACTED] a Clinical Psychology Doctor
to "bolster" the alleged victims testimony (Tr. p. 184 Lns. 1-25 / Tr. p. 185 Lns. 1-9)
Kelly Perkins Brown Public Defender (Closing Arguments) by using Case
Law Schumpert / RAPE TRAMA in which prejudiced the defendant
and inflamed the minds of the Jury. This was very Serious Harmful
Error of Law. Trial Judge in (Tr. p. 137 Lns. 15-19) sees that
Solicitor prejudiced the defendant by talking about "Rape" to
the Jury. Very Prejudicial (Tr. p. 138 Lns. 3-11) The Trial Judge
was full aware of the Confusions of Facts and Law this
would bring to the Jury. (Tr. p. 139 Lns. 5-17) Trial Judge
Questions the Credibility of the witnesses. (Tr. p. 140 Lns. 1-6)
Trial Judge tells Solicitor B. [REDACTED] She is "Cherry Picken"
Questions and it would seem to him, "It has a Danger of
then Stops his sentence before he said "Misleading". Therefore the

EXHIBIT # [REDACTED]

(7) [REDACTED] [REDACTED]

Trial Judge seen the Misconduct by the Solicitor in which was Very Bias, UnJudicial, and Un Constitutional and completely fundamentally Unfair and Prejudice towards the defendant. This is Prosecutorial Misconduct and Using Unfair Prosecutorial Tactics in which inflamed the minds of the Jury. and by the State Using Law Books, Media, Inv. Books and the Medical Experts to bolster the Credibility of the alleged Victim. Trial Judge is in Serious Violation and severely Abused his Discretion and Power of Law as the Justice of the Peace.

This act is Unconstitutional and his error of Law Concerning the Evidence provided by the State in which there was none. But pure Conjecture and Suspicion Citing Jackson v. Virginia: cite as 99 S.Ct. 2781 (1979)

There for the defendant should have been granted a ^{trial} Mistrial (Tr.p. 137 Ins: 5-25) upon the motion Defense requested in motion in which was "Denied". There for the defendant should not have been Sentenced to Life without Parole under the S.C. Code of Law § 17-25-45 Recidivist Act Statute and also, Abuse of Discretion and Law (Tr.p. 257 Ins: 21-25) Trial Judge admits that the Sentence "is not Fair"

The Court: well, frankly I wish the law did not require me in a situation like this to give you this sentence. "I think it's not fair either," frankly, but that is beyond my power. I don't make the laws, I just enforce it. Also there was no Evidentiary hearing to determine whether Prior Offense was related before Using the § 17-25-45 Recidivist Statute to enhance the defendants Sentence to Life without Parole.

U.S. v. Breckenridge: 93 F. 3d. 132, (4th. Cir 1996) Ineffective Assistance of Trial Counsel, EXHIBIT # CR 17-16 (8) CR 17-16

Ineffective Assistance of
APPELLATE COUNSEL

Ms. E [REDACTED] Duff, Clerk, Appellate Attorney for the defendant was ineffective for failing to adequately represent the defendant in a Fundamentally and Full Appeal by abandoning the Appellant in filing an Anders Brief on the 21st. day of September, 2006, saying that the Appellants Case is Without Merit. This is Serious Error. Also in Letter by U.S. Mail dated on the 16th. day of February, 2006, The argument she presented to the court will probably not succeed on Direct Appeal, because only Judicial Errors that were raised to the Judge by your attorney can be brought up. That it would "possibly" be a good argument for a P.C.R. in which it wasn't. Also The Appellate court will not second guess a Jury's determination of guilt, as long as there is any evidence to support it. That the State is not required to produce D.N.A. evidence or proof that the victim "alleged" is no longer a Virgin, One can be convicted by the word of the alleged victim alone. She realized it is hard to understand, but it's the law. This is wrong. Testimony has to be Corroborated with factual evidence to support the claim. And also a Testimony does not prove the Element of the Offense.

See Errors of Law in Pro-Se Amendment. Therefore, Appellant Attorney E [REDACTED] Duff, Clerk denied the Appellant of his first bite of the apple in which he is entitled to. In which deprived the Appellant of a Fair and Constitutional Direct Appeal.

Orr V. STATE: 262 Ga. App. 125, 584 S.E. 2d. 720 REVERSED
Pennsylvania V. Finely: 481 U.S. 551 (1987); Ross V. Moffitt: —
417 U.S. 600 (1974); Evitts V. Lucey: 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.
2d. 821 (1985)

(9) EXHIBIT # [REDACTED]

Ineffective Assistance of Trial Counsel "INV. BLEVINS" "PURJURY"

(Tr.p. 33 Lns: 13-18) Opening Statements "Solicitor Chandler" Inv. - Blevins who, investigated it initially (Ln. 13) (Tr.p. 49 Lns: 3-25) Linda Brown (Tr.p. 50 Lns: 1-2) Direct Exam; (Tr.p. 61 Lns: 5-22) Cross-Exam (Tr.p. 81 Lns: 12-14) Direct Exam, Christina Brown (Tr.p. 84 Lns: 15-18); "very prejudicial" (Tr.p. 101 Lns: 10-23) Direct Exam Inv. Blevins, (Tr.p. 105 Lns: 7-25) Cross Exam (Tr.p. 106 Lns: 1-25) (Tr.p. 107 Lns: 1-25) - (Tr.p. 108 Lns: 1-25) (Tr.p. 109 Lns: 1-15) These Testimonies here by Solicitor Chandler, Linda B, Christina B, and Inv. B, are "false and incorrect". See S.C. Code of Law § 16-9-10(a)(1)(2) - (B)(4), in which is "Purjury" (A)(1): It is unlawful for a person to wilfully give "False", "misleading" or "Incomplete" testimony under oath in any court of record, judicial, administrative, or regular proceeding in this State. (A)(2): It is unlawful for a person to wilfully give "False" testimony, misleading or incomplete information on a document, record report, or form required by the laws of this State. (B)(4): A person who violates the provisions of Subsection (A)(1) is "Guilty of a Felony offense" and upon conviction, must be "Fined" in the discretion of the Court or "Imprisoned" not more than (5) Five years or both. Trial Counsel was ineffective for failing to "enpeach" the testimonies of the above "States" witnesses who in fact committed a crime in the Court of Law. Citing: Orr v. State; 584 S.E. 2d 72 (GA. Ct. App. 2003) Counsel Ineffective for "in Statutory Rape Case" failing "to object to "Police" officers' testimony that impermissible bolstered the Credibility of the alleged Victim where Credibility was a major issue on the element of Penetration.

EXHIBIT A

CR. 5

(10)

Tejeda V. Dubois: 142 F.3d 18 (1st Cir. 1998) Trial Counsel failure to present a coherent argument to the Judge and Jury, based on defense "Police Fabrication" rendered defendants' Trial "Fundamentally Unfair" and unreliable and Constituted Ineffective Assistance of Trial Counsel. Hadley V. Groose: 97 F.3d 1131 - (8th Cir. 1996) Trial Counsel "failure" to use "Police Reports" to impeach police officers testimony, relating to "foot prints" where counsel knew officers testimony was contradicted by body of Police Report constituted Ineffective Assistance of Trial Counsel.

On September 11, 2002 "Supplemental Incident Report" at N.E. MIDDLE SCHOOL (02-35498) Reporting Officer - Inv. T. [REDACTED] Unit NO: 4122 by Lt. M. H. [REDACTED] "Inv. B. [REDACTED]" gave false Testimony to being "Initial Investigator", L. B. [REDACTED], C. B. [REDACTED] and Solicitor C. [REDACTED] as well.

On September 11, 2002 Aiken County Sheriff's Office - Incident Report (02-35498) Reporting Officer - Inv. T. [REDACTED] Unit NO: 4122 by Lt. M. H. [REDACTED], again not Inv. D. B. [REDACTED], but he was assigned to follow up Investigator on the 30th day of Sept. 2002. There fore again, Inv. Blevins, L. B. [REDACTED], C. B. [REDACTED], Solicitor C. [REDACTED] gave false testimony in which is Illegal. The State and it's witnesses are in fact in violation of 'Perjury' in which deprived the defendant of a Fundamentally Fair and Constitutional Trial by Jury. Also See Warrent NO: F-718985 S.C. Code of Law - § 16-25-20 for Criminal Domestic Violence on 9/29/02 the defendant alleged struck L. B. [REDACTED] by officer D. J. - F. [REDACTED]. See (Tr. p. 87 Lns: 4-20) Cross-Exam Alleged Victim the defendant left on Sept. 11, 2002.

EXHIBIT # [REDACTED] 0036-12
(11) [REDACTED]

also See Criminal No: 11-03-263 18. U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(2). Pre Sentencing Report page 7 # 9 -

Officer Inv. T. [REDACTED] Unit No: 4122 took a Model 1000 - 130 Cal Carbine Military Rifle from the defendant the same day defendant left. (Constitutional Question) How can a person cause physical harm to someone if you ain't there? Perjury / Vandalism also See (Tr.p. 255 Lns: 1-5) - (Tr.p. 256 Lns: 9-11) G. B. [REDACTED] "L. B. [REDACTED]'s Husband" whom she was supposed to have been separated from See (Tr.p. 42 Lns: 10-12) (Tr.p. 52 Lns: 19-20) clearly shows beyond a reasonable doubt that Hard Feeling between Defendant and alleged victims family is relevant. See State v. Paul Schmidt - No: 22511 S.C. Supreme Court (1986) Evidence concerning hard feelings between Childs family and defendant's family was relevant Reversed and Remanded.

Also using L. B. [REDACTED] Testimony to severely bolster the Alleged victims testimony in which was very prejudicial to the defendants Fair and Constitutional Trial by Jury in also in which Trial Counsel was Ineffective for failing to impeach L. B. [REDACTED] Testimony that denied me the defendant a Fundamentally Fair Trial in which the Great United States Constitution and the South Carolina Constitution requires that I am protected and entitled too. In which I the defendant did not receive. STATE V. WHISONANT: (S.C. App. 1999) 335 S.C. 148, 515 S.E. 2d 768

[REDACTED]
EXHIBIT # [REDACTED] GR 3

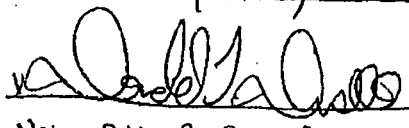
(12)

CONCLUSION)

Therefore, ~~Mr. P. B.~~, was Ineffective for very serious unjudicial Error of Law, The Solicitors for Using Prosecutorial Misconduct and Using Unfair Prosecutorial Tactics and Trial Court Judge denying the defendants Mistrial Motion is in fact "UnConstitutional", "Bias" and "Illegal". Evidence provided by the defendant thru Transcript and Documentation has proven beyond a reasonable doubt that (his) Life without Parole is invalid and void. And should be Reversed and Remanded back to the Lower Court for a New Trial"

Respectfully Submitted
Noel Gray #307540
Noel Gray #307540
Murry #212
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, S.C.

Sworn and Subscribed before me
this 30th day of September 2009,



2009

29210

Notary Public for South Carolina My Commission Expires
My Commission Expires August 15, 2015

~~EXHIBIT #~~
(13)

~~EXHIBIT #~~

- CONCLUSION -

The Defendant thru Documents and Transcripts in support of a Vendetta that Linda Brown did in fact not only use my past to get even for leaving her, but also used her daughter K. B. to say I had sex with her several times. November 13th, 2001 to March 26, 2002, the defendant was in the Old Aiken County Detention Center awaiting to be transported to Brunswick, GA. 4 1/2 hour 1 way for a Simple Technical Violation of Probation, There are no allegations of neglect here, See pgs 4-10 in Trial Packet, L. B. & M. W. obtain a Attorney for \$3,000.00. Letters to Police November 11, 01 see warrant 2004-GS-02-1333, Everyone in transcripts L. B., K. B., M. W., L. B., W. W., M. W. Jr. wrote letters on the defendants behalf. No Sexual Misconduct here. See pg. 11, when Linda and Mikes Attorney got me out of Jail. Amendment of Probation, Pg. 12-13 L. B. pays \$1,062.50 on Simple Larceny on July 30, 2002. No Sexual Misconduct here, Pgs. 14-18 allegations denied by Linda and M. W. See Federal Packet pgs. 7 #9 Verification of Inv. T. R. appearance at the house after allegations dismissed. Page 9 to verify L. B. and M. W. picking up defendant and taking him to hospital #35 and pg. 11 #52, Pg. 19 of Trial packet, C. O. U. on 9/29/02 defendant left the 11th. not there police looking for him for Rifle. Pg. 20. Inv. Blewing coming into the picture. Lying about initial Investigator in trial. pg. 27, Ln. 3-4 defendant left, L. B. calls police. D.S.S.

(14) ~~1-130-1333~~ ~~1-130-1333~~
EXHIBIT # ~~1-130-1333~~

pg. 28. defendant told dictation 11-19-2004 D.S.S. that M [redacted] has touched K [redacted]. Never Investigated.

pg. 29. D.S.S. Linda Brown tells D.S.S. that when living with M [redacted] W [redacted] on 11-08-04 B [redacted] with M [redacted] wife molesting K [redacted] not Boy friend Just suspicion until Neighbor told her "Shows she never witnessed nothing".

pg. 30. K [redacted] tells D.S.S. M [redacted] wife messed with her as well. K [redacted] also tells D.S.S. "She does not like Uncle M [redacted]".

I the defendant wonders why, Under the Provisions of Transcript Page 87 Cns. 6-20, Citing State v. Paul Schmidt; No: 22511 South Carolina Supreme Court (1986) Reversed and Remanded.

Hard feelings and Inconsistent Statement Shows beyond a reasonable doubt that evidence of Hard Feelings between the defendant and L [redacted] B [redacted] are relevant to prove beyond a reasonable doubt that a "Vendetta" in the reason why the defendant is Incarcerated. Therefore, the Defendant respectfully request that this case Indictment No: 2004-GS-02-1333/1334. be reversed and Remanded back to the lower courts for a New Trial.

Respectfully Submitted
Nail Guy #307590

(15)
EXHIBIT # [redacted]

- Defendants' Witness List -

1. Attorney George Bush: [REDACTED] Augusta, GA. Attorney Linda Brown and Mike Williams obtained for \$3,000.00 to get defendant out of Jail. Nov. 13, 2001 to March 26, 2002. See Indictments 2001-GS-02-1333/1334.
2. New Ray (Investigator) New Ellenton Police Department Initial INVESTIGATOR # 2 of Dismissed Sexual Battery on Sept. 11, 2002 and Rifle.
- 3) Inv. Tim Randall # 4122 Aiken County Sheriff's Department. Initial Investigator #1 of # 2 and Rifle. Sept. 11, 2002
- 4) Special Agent J. Richard Brown A.I.E. on Rifle to show that the defendant was not there to hit her on the 29th day of Sept. 2002. Police looking for him on the 11th-12th etc.
- 5) Anthony + Paulette ("Good Times Karaoke" - Goodman's Chevy Dealership Anthony's employed there "Chief Mechanic" [REDACTED] the defendant, [REDACTED] B [REDACTED], M [REDACTED], B [REDACTED] W [REDACTED], K [REDACTED] B [REDACTED], M [REDACTED] Jr. went to every Friday/Saturday night (Sing Karaoke) from (7:30 pm to 1:00 am). Proposed to [REDACTED] and Country Ranch 803) 867-2388 "Mr. Mrs. Farrell" Owner.
- 6) Victim Services Kalamia Plaza "concerning [REDACTED] B [REDACTED] and Greg Brown
- 7) Aiken Barnwell Mental Health % K [REDACTED] B [REDACTED] and G [REDACTED] B [REDACTED] Jr. Mental Health.
- 8) Inv. Bennie Williams, Aiken Public Defenders office Pictures, Letters, Subpoenaed that never showed up. for trial Attorney #1) 2 officers # 2, #3 never showed.

[REDACTED]
EXHIBIT # [REDACTED] 617

Subpoenaed Materials

- 1.) Mental Health Records on K [REDACTED] Br [REDACTED] "Aiken County Barnwell Mental Health.
- 2.) Phone Records List of Calls to [REDACTED] M [REDACTED] house, 2001-2002
my calls out of State Brunswick GA. ^{Mo.} Carolyn Title [REDACTED] Paws "noses" Aiken
- 3.) Visitation Records of OLD Aiken County Detention Center
on Nov. 13th & 14th. L [REDACTED] B [REDACTED], K [REDACTED] B [REDACTED], B [REDACTED]
W [REDACTED] visited the defendant after he was arrested.
Also gave him \$20.00
- 4.) L [REDACTED] and G [REDACTED] Brown "Victim Services Records"
- 5.) List of Calls to [REDACTED] B [REDACTED] H [REDACTED] 2001-2002 L [REDACTED] mom
- 6.) Visitation on Glynn County Detention Center Brunswick, GA: 2001-2002
- 7.) Block Buster Video Mt. Vernon, Ill. L [REDACTED] B [REDACTED] got 2 movies in
July 2002. L [REDACTED] paid trip to see defendant's mom

EXHIBIT #

256-12

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO AIKEN COUNTY
DOYET A. EARLY, III, CIRCUIT COURT JUDGE

RECEIVED

DEC 29 2009

NOEL GRAY,

PETITIONER

S.C. SUPREME COURT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

WRIT OF CERTIORARI
- FINAL PRO-SE BRIEF OF PETITIONER -

NOEL GRAY #307590

PETITIONER

BROAD RIVER CORR. INST.

4460 BROAD RIVER RD.

COLUMBIA, SOUTH CAROLINA

29210

~~RECEIVED~~

(EX # 12)

~~NOEL GRAY~~

~~DOYET A. EARLY, III~~

~~STATE OF SOUTH CAROLINA~~

- ISSUE # 1 PRESENTED -

Was Post Conviction Attorney Bradley L.
Boni, depriving the petitioner his right to a Fundamentally
Fair and Constitutional P.C.R. ?

- ARGUMENT # 1 -

The petitioner filed his P.C.R. Application on April 18, 2008 and filed a Brief as well,

May 1, 2008 the petitioner is issued Bradley L. Boni Attorney at Law. From Aiken County, (See Attachments 1-4) (Attachment #5) (December 18, 2008) the petitioner recieved a letter from attorney, "First One" He has never done a C.S.C case, and is not a Criminal Lawyer,

May 1, 2008 to Dec. 18, 2008 = 7 Months

(Attachment #6) Jan. 21, 2009 visit,

January 5, 2009 Filed Motion to Address all Issues, in which Clerk Sends back, Sent again same day

the petitioner recieved it back, to Attorney B ~~on~~ L.

B ~~on~~ told him to submit it into court "Never Did"

(Attachment #7) Bradley L. Boni attorney at law did not file or Argue all Issues, And did not order any discovery or transcripts, Subpoena any witnesses. and deprived the petitioner the right to be heard.

From Visit to P.C.R. Hearing (12 days). This is harmful Error. And prejudiced the petitioner to a Fundamentally Fair and Constitutional P.C.R. Hearing,

The petitioner's P.C.R. was Fundamentally Unfair because Counsel denied him Due Process of Law" -

Substantive Due Process and Equal Protection of the Law because S.C. Supreme Courts holding in IN RE. BECKHAM:

365 S.C. 637, 620 S.E. 2d. 69 (2005, -

~~(10-5)~~

- ARGUMENT #1 CONT.

That the burden is on the government to prove a defendant's guilt beyond a reasonable doubt, based on competent evidence in which was denied as well as the U.S. Supreme Court's mandate in IN RE WINSHIP: 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970)

And under U.S. V. Grigsby: 85 F. Supp. 2d 100 (DRI - (2000)) That the petitioner was denied a Fundamentally Fair P.C.R. and Trial by Jury, because State only relied on an UnConstitutional Evidentiary Presumption that the victims testimony was sufficient to find the petitioner guilty beyond a reasonable doubt, and under ULSTER COUNTY COURT V. ALLEN: 442 U.S. 14-99 S.Ct. 2213, 60 L.Ed. 2d 777 (1979).

Also the petitioners case is under a violation of a Fatal Variance and Trial Attorney, Appellate Attorney and P.C.R. Attorney deprived the petitioner of a Fundamentally Fair Trial, Appeal and P.C.R. which is a Breach of Duty, Berger U. U.S.: 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314 (1935)

- CONCLUSION -

Based on the foregoing information and Attachment's provided by the Petitioner, The States useage of Inconsistent Statements used as consistant and Trial Counsel Ineffectiveness for failing to emperch States witnesses and allowing the States witnesses to "Bolster" the Credibility of the alleged Victims Testimony, and allowing the Judge and Solicitors Office to use "Purjury" in which is a Crime to be allowed without any commits or Legal actions to be taken, and failing to hold an Evidentiary hearing that is required by Federal law to enhance the petitioners Sentence (4th Cir) to LWOP, Failing to request an Lesser Included offense, in which is required by State Law that any reasonable doubt between lesser and greater offenses must be resolved in the petitioners favor BRIGHTMAN V. STATE: 336 S.C. 348, 520 S.E. 2d 614 (1999) failing to present any witnesses to corroborate petitioners testimony as well as P.C.R. Counsel, in which the testimony by Attorney George Bush of Augusta, GA, in which the Alleged victims mom and m ~~W~~ obtained in (2001-2002) See (verments and Indictments), undermined Confidence in Outcome of Trial Brown v. Myers, 137 F.3d. 1154 (9th Cir. 1998); U.S. V. Dawson: 857 F.2d 923, (3rd Cir. 1988); Lawrence V. Armontrout, 900 F.2d. 127 (8th Cir. 1990); Tosh V. Lockhart: 879 F.2d 412 (8th Cir. 1989), Montgomery V. Peterson: 846 F.2d 407 (7th Cir. 1988). And also many Violations of the petitioners Federal J.A.D.A. in which the State Swore and Signed to Obide and Comply with

~~(CIVIL)~~

in which they did not and Trial Counsel and Appellate Counsel failing to Argue Undetta and Evidence to the States Case in which in None, due to the alleged victims Testimony "Does" have to be corroborated and the Element of the offense has to be proven beyond a reasonable doubt, under the State and Federal Constitutional Amendments of Due Process, In which is Bias, Fundamentally Unfair, Extreme Prejudice and shocking to the Sense of Justice, to allow a Testimony that was inconsistent to take a mans life under the S.C. Code of Law § 17-25-45 Recidivist Statute is in fact unlawful and Un Constitutional,

There fore the petitioner case should in fact be Reversed and Remanded for a New Trial.

This petitioner/Defendant requests that he is intitled to a Fundamentally Fair and Constitutional Trial with Adequate Counsel. And is protected by our Great Constitutional Amendments and is Equal Protection of the Law.

sworn and subscribed before me
this 28TH day of November

x Donald J. Dink

Notary Public for South Carolina

My Commission Expires:

My Commission Expires
August 25, 2013

Respectfully Submitted.

Noel Gray #307540

Noel Gray #307590

Petitioner

(6)

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

SEP 1 2010

S.C. SUPREME COURT

APPELLATE DIVISION

DOCKET # 13-10000000000000000000

NOLL GARY,

V.

THE STATE OF SOUTH CAROLINA,

IN THE COURT OF

THE COMMON PLEAS

MOTION TO AMEND
 PETITION FOR
 WRIT OF CERTIORARI
 BY WAY OF
 JOHNSON PETITION
 NEWLY DISCOVERED
 EVIDENCE

(Amended)

~~Amended 1/1/10~~

13

EXHIBIT # ~~13~~~~(Amended)~~

- ISSUE PRESENTED -

Trial Court violated petitioner's Due Process under the 5th Amendment of the United States Constitution, Violated the petitioner's rights to Effective Assistance of Trial Counsel under the 6th Amendment and Violated his rights to a Fundamentally Fair and Fair Trial By Jury under the 14th Amendment and Violated Article I § 14 of the South Carolina State Constitution by Filing a "Joint Motion - Order of Continuance" in which it stated the petitioner's Federal Interstate Agreement on Detainers Act 120 for a Speedy Trial. In which it did the State to have more time to prosecute. In which lost the petitioner his life under SC Code of Laws § 17-25-45 which is a statute.

And the R.R. Agency failed to give the petitioner adequate representation on which the R.R. Agency

~~(P. 198-2)~~

~~CONFIDENTIAL~~

- STATEMENT -

Debra Ann McGee, F.I.D. Court, Pacific County, Retired
 Monday on April 14, 2008 - with Alameda County Clerk of
 Court Anthony Bradley, L. Bon City with Appellate on May 1,
 2008. The Petitioner, where Mr. Bon by U.S. Motion
 May 6, 2008 and October 20, 2008. Mr. Bon finally
 made the Petitioner on December 18, 2008 (See Exhibit
 #1) Mr. Bon came to the Alameda County Court on
 January 21, 2009 + the Petitioner with only
 Petitioner on and Petitioner on the Petitioner
 + the Clerk of Court (See EXHIBIT 2).

January 5, 2009 the petitioner (F.I.D. Motion To
 Address all issues + the Clerk of Court + the Court
 of Common Pleas, Third Judicial Circuit + Alameda County.
 Alameda County. She returned to the petitioner +
 January 15, 2009 (See EXHIBIT 3) February 2, 2009 (12 days)
 from the petitioner + Court. Petitioner (Court) filed
 the Motion To Address All Issues + the petitioner +
 Medical Records, Transcripts, Discovery Rules, and
 any research on the Court. The Court, the Court
 Clerk of Court, 117 25 45 the Court + the Court. A
 Petitioner (Court) presented applicant Petitioner
 Application on the Court + the Court. The Court
 was paid with by way of the Petitioner.

(4-20-09)

EXHIBIT #120.3

App P 279 Ltr. 2-11, the person who told the Judge
that he was having a meeting with the Attorney General
and was in the White House. The Attorney General was
G. Gordon Liddy (see exhibits 4-5, 6-7) trying to get
help for the Third Army. The Order of Continuation
to the White House that I shared the person was A.D.A.
Tipton and Speed, Total Coverage.

During the prior years, BCR No. App p 275 Lns 21-25
plus some other comments and comments were approved
in Open House for a Court review of the Trial.

Conf. Session 817-11-10 3: App p 276 Lns. 14-25.

W. P. 2776. 1116. State of Holland. In 14-15 M. B. n. prepared - 10 Aug. 1891.

Apr. 278 (ms) 1-3 Mr. Williams & H. H. Cook & Mr. Brown have collected a Com. of the same in the (1891)

App p. 279 (Case 2-11, the per... the Honorable
of W... help of the...
Council. App p. 286 (Cases 23-25 and App p. 287 -
Cases 1-2, the...
with the Council...)

App p 287 Lns 3-14 - ... I never reached the prior
 to the Conv. on ... the new ... Si. V.
... ... on Dec. 17th 1863

[illegible]

(b)(7)(C)

CONFIDENTIAL

Also see 5-10-3 10-14-15 10-16-17
 10-18-19 10-20-21 10-22-23 10-24-25
 10-26-27 10-28-29 10-30-31 10-32-33
 10-34-35 10-36-37 10-38-39 10-40-41
 10-42-43 10-44-45 10-46-47 10-48-49
 10-50-51 10-52-53 10-54-55 10-56-57
 10-58-59 10-60-61 10-62-63 10-64-65
 10-66-67 10-68-69 10-70-71 10-72-73
 10-74-75 10-76-77 10-78-79 10-80-81
 10-82-83 10-84-85 10-86-87 10-88-89
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 10-218-219 10-220-221 10-222-223 10-224-225
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 10-242-243 10-244-245 10-246-247 10-248-249
 10-250-251 10-252-253 10-254-255 10-256-257
 10-258-259 10-260-261 10-262-263 10-264-265
 10-266-267 10-268-269 10-270-271 10-272-273
 10-274-275 10-276-277 10-278-279 10-280-281
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 10-306-307 10-308-309 10-310-311 10-312-313
 10-314-315 10-316-317 10-318-319 10-320-321
 10-322-323 10-324-325 10-326-327 10-328-329
 10-330-331 10-332-333 10-334-335 10-336-337
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 10-386-387 10-388-389 10-390-391 10-392-393
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 10-410-411 10-412-413 10-414-415 10-416-417
 10-418-419 10-420-421 10-422-423 10-424-425
 10-426-427 10-428-429 10-430-431 10-432-433
 10-434-435 10-436-437 10-438-439 10-440-441
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 10-450-451 10-452-453 10-454-455 10-456-457
 10-458-459 10-460-461 10-462-463 10-464-465
 10-466-467 10-468-469 10-470-471 10-472-473
 10-474-475 10-476-477 10-478-479 10-480-481
 10-482-483 10-484-485 10-486-487 10-488-489
 10-490-491 10-492-493 10-494-495 10-496-497
 10-498-499 10-500-501 10-502-503 10-504-505
 10-506-507 10-508-509 10-510-511 10-512-513
 10-514-515 10-516-517 10-518-519 10-520-521
 10-522-523 10-524-525 10-526-527 10-528-529
 10-530-531 10-532-533 10-534-535 10-536-537
 10-538-539 10-540-541 10-542-543 10-544-545
 10-546-547 10-548-549 10-550-551 10-552-553
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 10-570-571 10-572-573 10-574-575 10-576-577
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 10-610-611 10-612-613 10-614-615 10-616-617
 10-618-619 10-620-621 10-622-623 10-624-625
 10-626-627 10-628-629 10-630-631 10-632-633
 10-634-635 10-636-637 10-638-639 10-640-641
 10-642-643 10-644-645 10-646-647 10-648-649
 10-650-651 10-652-653 10-654-655 10-656-657
 10-658-659 10-660-661 10-662-663 10-664-665
 10-666-667 10-668-669 10-670-671 10-672-673
 10-674-675 10-676-677 10-678-679 10-680-681
 10-682-683 10-684-685 10-686-687 10-688-689
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This is a copy of the original document before the
 Honorable Court of the State of the people.

Respectfully Submitted
 Noel G. 11307500
 Noel G. 11307500
 Miami 212

Printed Name (see form)
 11307500. Box 1 Row Rd.

Printed Name (see form)

201710

This is a copy of the original document before me

th 16th day of September 2017
Susan J. Johnson

Notary Public for the State of Florida

My Commission Expires

March 5, 2018

CC/FILE Page 712

~~(P. 11307500)~~
EXHIBIT B 11307500

EXHIBITS ENCLOSED TO SUPPORT
Austin V. State, — S.C. —, 409 S.E.2d 395 (1991)

- EXHIBIT # 1) Letter to Clerk of Court dated January 6, 2009
 2) Motion to address all issues dated January 6, 2009
 3) Order of appointment for legal Counsel May 1, 2008
 4) App. of Counsel Recommendation May 1, 2008
 5) Order to Report to see Counsel Jan. 21, 2009
 6) Letter from Counsel Dec. 18, 2008
 7.) Inadequate Representation of P.C.R. Counsel
 8.) July 2nd, 2009
 9.) Certificate of Service
 10) Notice of Appeal dated September 15, 2010
 11) Pro-se Amend. to Subject Matter Jurisdiction
 dated September 30, 2009.
 12) Applicants Writ of Certiorari dated
Dec. 24, 2009, Issue #1 P.C.R. Counsel
 13) N.D.E dated Sept. 17, 2010

Therefore, the Applicant has proven through Material
 Facts that he has now did not waive his rights to Amend
 his Post Conviction Relief Application.

Respectfully Submitted

Under the penalty of perjury, the applicant hereby states
 that these EXHIBITS are true and correct to the best of his
 ability.

Moll May #307590
 Pro-se Applicant
 2011-CP-02-02776

Noel Gray #307590
 B.R.C.I. Murray 212-B
 446 Broad River Rd.
 Columbia, S.C.
 29210

April 16, 2012

In The Court of Common Pleas
 Honorable Clerks Office
 P.O. Box 583
 Aiken, S.C. 29802-0583

4.18.12
 L. J. Hodard
 U.C.P. & G.S.
 Anita Knoepfle
 Deputy Clerk

Re: Post Conviction Relief "Successive Application Amendment"
 to show cause that the Applicant should be granted Counsel and a
 Evidentiary Hearing by this Honorable Court. 2011-CP-02-02776

Honorable Clerk,

Please find enclosed a True Copy of the Above
 titled Amendment. Applicant's Pro-Se, to support claims and to
 make amendments with Attached EXHIBITS.

Please send a clock stamped Copy back in the Self-
 Addressed Envelope supplied by the Applicant; Thank You Kindly!

Respectfully Submitted
 Noel Gray #307590
 Noel Gray #307590
 Pro-Se Applicant

April 16, 2012
 Columbia, S.C. 29210

April 16, 2012

Dear Honorable Clerk,

Just a little note to let you know that you don't have to send a copy back of the Brief's except ~~two~~ (2) the Pro-se Subject Matter Jurisdiction Exhibit #11 - Appeal EXH10

The Applicant contends that he is a layman and did not know how to file or where to file for that Rule 59(c) motion to address all issues. The Applicant also contends that he tried to have those issues amended but failed because of P.C.R. Counsel Bradley L. Boni. Also note that the applicant did in fact write Bradley L. Boni Esq. and Kelly P. Brown Esq. up with the Disciplinary Committee because of Ineffectiveness of Trial and Appellate Counsel.

These Exhibits are to clearly show this Honorable Court that the applicant did not waive his appeal and did attempt to file a Rule 59(c) in which P.C.R. Counsel did not do as the Applicant's request. In which the law requires.

Respectfully Submitted
 Noel Gray #307590
 Noel Gray # 307590
 Murray # 212-B
 Broad River Corr. Inst.
 4160 Broad River Rd.
 Columbia, S.C.
 29210

April 16, 2012
 Columbia, S.C. 29210

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Noel Gray, #307590

2011-CP-02-2776

Applicant,

v.

FINAL ORDER OF DISMISSAL

State of South Carolina,

Respondent.

7.5.2012
Liz Godard
C.C.P. & G.S.
Anita Knoepfle
Deputy Clerk

This matter comes before the Court pursuant to an application for post-conviction relief filed December 9, 2011. The Respondent made its Return and Motion to Dismiss on January 20, 2012, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated January 20, 2012, provisionally denying and dismissing this action, while giving the Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated February 17, 2012, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

The Applicant responded to the Conditional Order of Dismissal with two separate documents. The first document is captioned "Re: Applicants Response to the Respondents Return and Motion to Dismiss/Conditional Order of Dismissal..." The second document is captioned "Post Conviction Relief (P.C.R) (Successive Application Amendment)." In both documents, the Applicant alleges the following claims:

- Newly discovered evidence of Ineffective Assistance of Trial Counsel.
 - "Applicant contends that the trial counsel denied him the constitutional right to raise the Vandetta issue, thereby violating his right to present a

Page 1 of 3

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JUL 05 2012

Liz Godard
C.C.C.P. & G. A., Aiken County, S.C.

Anita Knoepfle
Deputy Clerk

04 GS-02-1333

defense and entitling him a new trial, see new evidence at COD at 2-3."

- Ineffective assistance of Appellate Counsel.
- Ineffective assistance of Post Conviction Relief Counsel.
 - "Failed to subpoena witness(es), Applicant can not show ineffective assistance of counsel when witness(es) are not presented at PCR.
 - "PCR Counsel failed to raise critical issues, therefore, presented no testimony or evidence regarding any issue and it is therefore, waived."
- "The Applicant in case in chief, filed January 9, 2012 against the respondent, a motion for Entry of Default Judgement and a Motion for Summary Judgement. Applicant argues that these irregularities constitute a denial of due process."

This Court has reviewed Applicants responses to the States Motion to Dismiss in its entirety, in conjunction with the original pleadings, and finds that no sufficient reason has been shown why the Conditional Order of Dismissal should not become final. This Court finds that the Applicant cannot satisfy the requirements of the Lanier test for newly discovered evidence. Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (S.C. App. 2005). A party making a motion for a new trial or for relief from judgment based on newly-discovered evidence must show that the evidence:

- (1) will probably change the result if a new trial is granted;
- (2) has been discovered since the trial;
- (3) could not have been discovered before the trial;
- (4) is material to the issue; and
- (5) is not merely cumulative or impeaching.

Id. The Applicant has failed to set forth why the evidence could not have been raised in his previous post-conviction relief applications.

Additionally, the Court finds that the allegation of ineffective assistance of trial counsel has been raised and ruled upon in prior proceedings. Furthermore, the Court finds that the Applicant has failed to show any reason why the ineffective assistance of appellate counsel allegation could not have been raised in his prior post-conviction relief applications. The Court finds that "the contention that prior post-conviction relief counsel was ineffective is not *per se* a 'sufficient reason' allowing for a successive post-conviction relief application under § 17-27-

TRE
#2

90." Id. at 451, 409 S.E.2d at 394. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advised the Applicant he must file and serve a Notice of Appeal within thirty days of service on this Order to secure appellate review. *See* Rule 203, SCRAP. The Applicant's attention is directed to Rule 243, SCRAP, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 20 day of June, 2012.


DOYET A. EARLY, III
Chief Judge for Administrative Purposes
Second Judicial Circuit


South Carolina

104 -GS-02-1333

NOEL E. GRAY, JR. #307590

MURRAY # 212-B

BROAD RIVER CORR. INST.

4460 BROAD RIVER RD.

COLUMBIA, S.C. 29210

JUL 23 2012

JULY 23, 2012

SOUTH CAROLINA SUPREME COURT

HONORABLE CLERKS OFFICE

PO BOX 11330

COLUMBIA, S.C. 29211

RECEIVED

JUL 25 2012

S.C. Supreme Court

ATTENTION HONORABLE CLERK OF COURT :

RE: NOTICE OF APPEAL

NOEL E. GRAY, JR. U. STATE

C/A NO. 2011-CP-02-02776

Dear Honorable Clerk,

Please find enclosed petitioners NOTICE OF APPEAL 2011-CP-02-02776, on July 5, 2012 the Honorable Daye A. Early, III, Chief Administration Judge for the Second Judicial Circuit dismissed petitioners Application for Post-Conviction Relief by a Final Order of Dismissal.

The petitioner hereby wishes to Appeal this matter before this Honorable Court pursuant to Rule 243 SCRAP.

Also, please find enclosed Copy with self Addressed /Stamped envelope for your convenience to clock Stamp and return a copy to petitioner in Packet 2 of 2.

Respectfully Submitted
Noel E. Gray Jr. #307590
Pro-Se Appellant

GS-02-1335

04

JUL 23 2012

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL 25 2012

CERTIORARI TO AIKEN COUNTY

DOYET A. EARLY, III, CIRCUIT COURT JUDGE

S.C. Supreme Court

NOEL E. GRAY, JR #307540

VS.

STATE OF SOUTH CAROLINA,

PETITIONER,

RESPONDENT.

NOTICE OF APPEAL

I NOEL E. GRAY, JR #307540 pro-se petitioner Appeals the Honorable Doyet A. Early, III, Final Order of Dismissal denying Post-Conviction Relief to the Respondent. The undersigned pro-se litigant received notice of entry of the Order on July 11, 2012. A copy of the order on appeal is attached to this notice.

July 23, 2012

Respectfully Submitted

Noel E. Gray Jr #307540

Noel E. Gray Jr.

Pro-Se petitioner

04 -GS-02- 1333

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

JUL 23 2012

CERTIORARI TO AIKEN COUNTY
DOYET A. EARLY, III, CIRCUIT COURT JUDGE

NOELE.GRAY, JR, #307590

VS.

Pro-Se Petitioner.

STATE OF SOUTH CAROLINA.

RESPONDENT.

MEMORANDUM OF FACTS AND LAWS FOR
WRIT OF CERTIORARI

NOEL E. GRAY #307590 PRO-SE PETITIONER

MURRAY #212-B

BROAD RIVER CORR. INST.

4460 BROAD RIVER ROAD

COLUMBIA, S.C. 29210

PCR C/A NO; 2011-CP-02-02776

-GS-02-1333

04

The Supreme Court of South Carolina

Noel Gray, Petitioner,

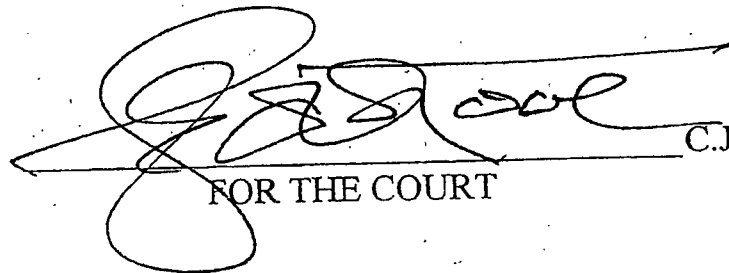
v.

State of South Carolina, Respondent.

Appellate Case No. 2012-212704

ORDER

In the explanation required by Rule 243(c) of South Carolina Appellate Court Rules (SCACR), petitioner has failed to show that there is an arguable basis for asserting that the determination by the lower court was improper. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.


C.J.
FOR THE COURT

Columbia, South Carolina.
August 30, 2012

cc: Megan Elizabeth Harrigan, Esquire
Mr. Noel E. Gray, Jr., 00307590

04 GS-02-1333

F 718 990

F 718 991

FORM 5

2013-CP-02-00478
2004-OS-02-01333, 01334

Filed 27 February 2013

C.C.P. & G.S. Aiken County

Deputy Clerk: a.m. Time 8:30am

Trial Judge: Jackson Gregory

Trial Atty: Kelley Brown

Court Reporter: Brenda Sigwald

Sec: PCR Petitioner Solicitor

General Sessions Atty. Gen.

Appointed Atty.

STATE OF SOUTH CAROLINA)

County of AIKEN)NOEL E. GRAY JR # 307590)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Murray #212, Broad River Corr. Inst 4460 Broad -
River Rd. Columbia, S.C. 29210
2. Name and location of Court which imposed sentence 2nd Judicial Circuit Court
Aiken, S.C.
3. Name(s) of co-defendant(s) (if any) Linda Brown States Witness "
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2004-65-02-1333
 - (b) 2004-65-02-1334

- (c) 2004-05-02-1335
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 2, 2005 WOP S.C. Code Ann. § 17-25-45
- (b) February 2, 2005 WOP S.C. Code Ann. § 17-25-45
- (c) Non-Pros.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. Post Conviction Relief (PCR)
- iii. State Supreme Court Writ of Certiorari
- iii. Federal Habeas Corpus
- (b) the result in each such Court to which you appealed:
- i. (Anders) No Precedential Value Dismissed
- ii. Dismissed with Prejudice
- iii. Dismissed
- iii. Dismissed (Procedurally Defaulted Claims)
- (c) the date of each such result:
- i. January 11, 2008
- ii. April 9, 2009
- iii. December 2, 2010
- iii. January 24, 2012
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion "Anders"
- ii. Dismissed with Prejudice
- iii. Dismissed Johnson
- iii. Procedurally Defaulted.
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel
- (b) Prosecutorial Misconduct / State Interference.
- (c) Ineffective Assistance of P.C.R. Counsel.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to convey (2) Two Plea Agreements
- (b) Using State Witnesses to Commit Perjury and Failure to expose deal or testimony.
- (c) Failure to prepare and aid Applicant to present procedural Barred Constitutional Issue's SCRIU P. 71-1143 that had merit. In first initial PCR Const. 14. Amend.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? Yes
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct Appeal
- ii. PCR.
- iii. Writ of Certiorari
- iv. Federal Habeas Corpus.
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals Columbia, S.C.
- ii. State Supreme Court Columbia S.C.
- iii. 2nd Judicial Circuit Court Aiken, S.C.
- iv. U.S. District Court Florence S.C. / U.S. Supreme Court Washington, D.C.

(c) the disposition thereof:

- i. Dismissed Anders
- ii. Dismissed w/ Prejudice
- iii. Dismissed Johnson
- iv. Dismissed Procedurally Defaulted

(d) the date of each such disposition:

- i. January 11, 2008
- ii. April 9, 2009
- iii. December 2, 2010
- iv. January 24, 2012

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. No Precedential Value Dismissed "Anders"
- ii. Dismissed with Prejudice
- iii. Dismissed "Johnson"
- iv. Dismissed "Procedurally Defaulted Claims"

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes / NO - see 10(c)

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. TO extensive See Petitioners Pro-se Brief "Abuse of Discretion and law"
- ii. TO extensive See Petitioners Pro-se brief "Same as i"
- iii. TO extensive See Petitioner's Pro-se Brief, same as i "

(b) the proceedings in which each ground was raised:

- i. Direct Appeal
- ii. Post Conviction Relief PCR
- iii. Writ of Certiorari State Supreme Court
- iv. U.S. District Court

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: Issues found After 1st PCR ~ 2011-2012
- (a) Cooper v. Lafler, 132 S.Ct. 1376 (2012) IAOTC
- (b) Martinez v. Ryan 132 S.Ct. 1309 2012 IAOPCRC
- (c) U.S. v. Cronin, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed. 2d 657 (1984)
- (d) Giglio v. U.S., 92 S.Ct. 763 (1972)
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Plea was given by State / Trial Counsel / Withheld it.
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Eleanor Duffy Cleary P.O. Box 11589 Columbia, S.C. 29211
- ii. Kelly Perkins Brown P.O. Drawer 2247 Aiken, S.C. 29802
- iii. Bradley L. Doni, 208 Newberry St. N.W. Aiken, S.C. 29801
- (b) the proceedings at which each such attorney represented you:
- i. Direct Appeal
- ii. Trial Counsel
- iii. Post-Conviction Relief PCR

19. State clearly the relief you seek in filing this application:

Reverse and Remand for New Trial

for Resentencing

for New P.C.R.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of AIKEN)

I, Noel E. Gray Jr. #307590, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Noel E. Gray Jr.

SWORN to and subscribed before me this 25th
day of February, 2013.

Susan H. Dye (L.S.)
Notary Public

My Commission Expires: March 5, 2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Noel E. Gray Jr. #307590, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Noel E. Gray Jr.
Applicant

SWORN or affirmed to and subscribed before me this

25th day of February, 2013

Susan H. Dye
Notary Public

Commission Expires

2018

My Commission Expires: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
NOEL E. GRAY JR #307590	)	2013-CP-02-00478
Petitioner,	)	2004-65-02-1333-1335
	)	
VS.	)	MOTION TO DISMISS PENDING
	)	PCR ACTION UNTIL PENDING
STATE OF SOUTH CAROLINA	)	APPEAL IS RENDERED COMPLETE.
<u>Respondent,</u>	)	

COMES NOW INTO THIS HONORABLE COURT Noel E. Gray Jr. #307590, by and through Pro-Se Representation, here by respectfully asking this Honorable Court to Dismiss PCR ACTION 2013-CP-02-00478 due to a pending Appeal in the S.C. Court of Appeals and the Petitioner can't have two(2) actions in Civil Court therefore, he respectfully submits that this Current PCR Action should be dismissed until the pending Appeal is complete.

Respectfully Submitted
 Noel E Gray Jr #307590
 Noel E Gray Jr.
 Pro-Se Petitioner

Sworn and Subscribed before me
 this 8th day of July, 2013

Susan N. Frye %

Notary Public for South Carolina

My Commission Expires
 March 5, 2018

My Commission Expires: _____

7.12.13

Deborah

CLERK OF COURT

Antia Knoetle

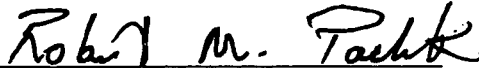
Deputy Clerk

30

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 28, 2013



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 28, 2013



Robert M. Pachak
Appellate Defender

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ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

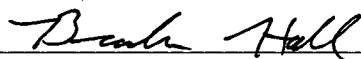
NOEL GRAY,

APPELLANT

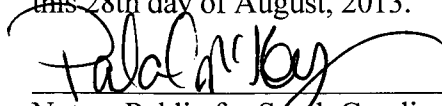
APPELLATE CASE NO. 2012-213607

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 28th day of August, 2013.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 28th day of August, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

RECEIVED
AUG 28 2013
SC Court of Appeals