

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

Dayet A. Early III, Circuit Court Judge

CASE NO. 2012-CP-05-46

Jerome A. Owens #299108 Petitioner,

State of South Carolina Respondent.

PETITION FOR A WRIT OF CERTIORARI

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Question(s) Presented

Is an Post Conviction Relief application successive when the original application and it's merits were ruled on an error of law S.C. Ann. Code 17-27-80 17-27-90 (1976) ?

Is the lower court ruling on error of law when the court ruling on the term of court rule is framed as the subject matter jurisdiction rule ?

Did the lower court ruling dismissing Post Conviction relief application deny the Petitioner Due Process rights under the South Carolina and U.S. Constitutions by failing the statutory requirements in his original and successive applications pursuant to 17-27-80?

FACTS AND PROCEDURAL BACKGROUND

On December 31, 2002, Owens was arrested for Failure to Stop for a Blue Light and Siren, Trafficking in Crack and Possession with the intent to distribute in proximity of a School. A jury convicted on all counts January 14, 2004. The presiding judge at trial sentenced Owens on two of the charges. Trafficking could not be enhanced because the State failed to produce priors. The trial judge completed his assignment at the Second Circuit Sine die and left the Circuit.

February 19, 2004 while incarcerated in SCDC the case pending at Bamberg was called for Court at the 5th Circuit Court of Common Pleas by the trial judge. The State then produced priors for enhancement of the remaining charge of Trafficking.

Timely Appeal was filed and dismissed State V. Owens, Op. No. (2006-UP-202 (S.C. Ct. App. filed April 14, 2006)

Applicant filed for PCR on May 25, 2006 alleged Ineffective Assistance of trial Counsel citing several allegations.

A memorandum of law was filed was submitted to the PCR judge on the sentencing issue beyond the term of court at Bamberg and being held at Richland.

An evidentiary hearing was held at Bamberg on August 8, 2007, Patrick L. Wright, Esquire represented Owens at PCR replacing appointed counsel Norma

A.T. Jett for unknown reason. PCR judge Honorable J. Michael Baxley denied and dismissed the application with prejudice. Rule 59(e) SCRCP was not filed timely and Wright left private practice without notice to Owens. Norma A.T. Jett filed an Appeal on the behalf of the Applicant. The Court of Appeals denied this petition by Order filed December 10, 2009. Owens Appealed to the South Carolina Supreme Court which was denied also. January 14, 2010. Owens filed a second PCR March 9, 2010 and Amended such August 16, 2010, alleged the same allegations of Ineffective Assistance. Owens filed a third PCR that is now before this court. This ~~RE~~ PCR was denied on the ground as being successive, barred by the one year statute of limitations, laches and res judicata.

And this Appeal is now timely filed. Owens now contends the lower court's ruling was improper.

Authorities relied upon

STATE V. CAMPBELL 376 S.C. 212, 656 S.E. 2d 371 Pg 2, 7, 10, 14, 15, 16
Washington V. STATE 478 S.E. 2d 833 Pg 3, 6
STATE V. DAVIS 375 S.C. 12, 649 S.E. 2d 178 Pg 2
TOWN OF HILTON HEAD ISLAND V. GODWIN 370 S.C. 221,
634 S.E. 2d 59 Pg 2
STATE V. Rhinehart 312 S.C. 36, 430 S.E. 2d 536 Pg 2
Rule 29 Pg 7, 13, 15
Roberts V. Wessinger 69 S.C. 283, 48 S.E. 248 Pg 7
Brewton V. Shirley 93 S.C. 365, 76 S.E. 988 Pg 8
State V. Best ~~257~~ S.C. 361, 186 S.E. 2d 272 Pg 8, 10, 15, 16
State V. Payne 332 S.C. 266, 504 S.E. 2d 335 Pg 9
Dewitt V. S.C. Dept Hwy. and Public Transp. 262 S.E. 2d 28 Pg 9, 10, 13
Scott V. State 513 S.E. 2d 100 pg 11, 12, 15
U.S. V. Johnson 944 F2d 396, 407 pg 11
Strickland V. Washington 466 U.S. 668 pg 12, 15
Kimmelman V. Morrison 477 U.S. 365 pg 12, 15
44-53-375 (C) Pg 12
Article 5 § 4 Pg 13
Shillito V. City of Spartanburg 54 S.E. 2d 521 Pg 14
Hines V. Farr 235 S.C. 436, 112 S.E. 2d 33 Pg 14
Suber V. State 371 S.C. 554, 558, 640 S.E. 2d 884 Pg 15, 16
Ruddy V. State 339 S.C. 29, 33, 528 S.E. 2d 419, 420 Pg 16
State V. Mixon 275 S.C. 575, 274 S.E. 2d 406 Pg 16
Burns V. Babb, 35 S.E. 2d 247 Pg 17
Carlise V. U.S. 116 S.Ct. 1460 Pg 17

ARGUMENT.

The Order of the PCR judge in this original PCR action has denied the petitioner his statutory right of due process. And in effect the petitioner has not obtained a ruling on the merits of his Application and argument presented before the PCR judge.

In *Washington V. State*, 324 S.C. 232, 478 S.E. 2d 833 (This court premitted a successive application where the applicant, due to "so many procedural irregularities", did not have direct review of a claim he brought in his first and second PCR.

Washington raised a number of issues in connection with his application. The PCR judge ruled on one issue particularly. The remaining issues raised to the court, the PCR judge made an order citing the matter can be addressed on direct appeal. Not requiring reversal by the judge.

The applicant cites the similar position to this court. See, *The lower court testimony, memorandum of law, and order of the court dated September 18, 2007* The PCR judge's order Page 5 of 7. Allegation that the court lacked subject matter jurisdiction cites: The "Applicant" has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. This ruling by the PCR judge's order and oral ruling is incorrectly framed in it's dismissal of the petitioner's application.

This court has recently corrected such an

argument. In *State v. Campbell* 376 S.C. 212, 656 S.E.2d 311 (2008) The State failed to file a timely rule 29 post trial motion pursuant to the Rules Crim. Proc. And this court addressed this rule. 376 S.C. at 216 However if the motion is not made within ten days of sentencing the court will be without jurisdiction to entertain the motion.

The Appellant framed his argument as an subject matter jurisdiction rule. In *State v. Campbell* Supra this court fully explained it's ruling in the reversed decision. The word jurisdiction when used in the cases cited were not used to determine lack of subject matter jurisdiction. The lack of jurisdiction language meant the trial court no longer has the power to act in a particular manner because the term of court had ended.

Historically in this State Rule 29 proceeded from the Common Law and motions were marked "heard" during the term on matters before a trial judge. And his power went no farther than such. Any matter not before his honor could not be later decided by him regardless if such a new matter may arise in the same case.

The holdings of the case law remains in tact today

See, *Roberts v. Wessinger* 69 S.C. 283, 48 S.E. 248 (S.C. 1904)

Before leaving a special session at Lexington both sides submitted arguments on the merits, in accordance with of the said order. The judge took all papers, and on December 10, 1903, filed the following: *** The special term of court was adjourned sine die by Hon. F.B. Gory

on November 28, 1903, and he went to his home in Abbeville in which place the above decree was written.

Brewton V. Shirley 93 S.C. 365, 76 S.E. 988 (1913) There was no action by the judge manifesting an intention on his part to dispense with any of the requirements in regard to amendments. See also, Barnett V. Piedmont Shirt Corp., 230 S.C. 34, 94 S.E. 2d 1 (1956) Same in result.

The case before this court today has it's similar position with the exception of a few points. And upon these points of practice of law in this State the question of the trial counsel's performance came into question.

There was a trial and by law the defendant and the state were entitled to have a sentence finalized at the term of court. State V. Best 257 S.C. 361, 186 S.E. 2d at 278 This case Best points to several misconceptions of the law that were exercised by the judge in the lower court.

Here in the case of State V. Owens 2003-GS-05-185, 186, 187 the defendant by law was entitled to have his sentence determined and finalized January 14, 2004 at trial upon jury verdict of guilty. The State at that time did not investigate their case for priors to enhance the charges. A colloquy between the court and the Solicitor proves that the State acted in bad faith to prosecute without evidence to trigger the statute.

In South Carolina there are no statutes addressing the Burden of Proof for collateral attacks of prior convic-

tions in the context of sentence enhancement provisions. And practically speaking the success or failure of a collateral attack of a prior conviction may depend on which party bears the burden of proof. In, *State V. Payne* 332 S.C. 266, 504 S.E.2d 335 (Ct. App. 1998) The relevant resolution to this issue is found in the case of *Dewitt V. South Carolina Dep't of Highways and Public Transp.*, 274 S.C. 184, 262 S.E.2d 28 (1980) (per curiam) in which our supreme court stated: when the state is prosecuting a person for an offense that carries an enhanced penalty on a conviction for a second or subsequent offense, the state is not required to prove the legality of the prior conviction, nor does it have to show the facts surrounding that conviction. It is only necessary for the state to prove that a previous conviction exists, that the conviction was for an offense which occurred prior to the commission of the offense for which the defendant is being tried, and that the defendant was the subject of that prior conviction *Id.* at 187, 262 S.E.2d at 29-30.

January 14, 2004 this procedure was in no form recognized during the jury trial or after the jury rendered it's verdict. The Solicitor did not have any documentation present before the judge to trigger the statute. January 12, 2004 the only material evidence the state presented was testimony of a so-called photograph he had in his office.

See, The pre-trial record page 2 lines 1-25 recorded January 12, 2004 and made part of this Application.

The usual rules as to presumptions and burden of proof in criminal cases apply in a prosecution of a person for a second or subsequent offense. In all criminal prosecutions when the state desires to inflict a more severe penalty on account of accused having been convicted previously, the burden is on the state to prove all the facts necessary to bring the case within the statute authorizing such penalty to be imposed. While the accused has the burden of proving affirmative defense. Dewitt V. South Carolina Dep't of Highways and Public Transp. Supra., State V. Best Supra, State V. Campbell Supra.

This case is one of a bedrock principle, Constitutional law and guaranteed right to effective assistance of counsel.

The record shows that the state demanded a trial for the trafficking charge ahead of an offense scheduled for trial by order of James R. Barber III, Heard September 18, 2003 and ordered October 2, 2003 See, Order attached here in and argued before the trial court January 12, 2004 and trial court's ruling to disregard the said order. Appendix Pg. 21

It was in fact the state's decision to force the Applicant into trial along with an unknown
See, Appendix Pg 2-6, lines 1-14

sentencing enhancement scheme that would apply whenever the state and trial judge felt like they were ready.

To the contrary of this procedure, trial counsel failed to object, much less inform the Applicant of any dangers to an "any conviction" standard as an enhancement prior offense for the present offense of the charge during this forced trial. And or to object and properly inform his client about the use of prior offense LS7 to enhance the sentence. *Scott V. State* 513 S.E.2d 100 Pre-trial hearing motion pg 2-20 in Appendix.

The federal courts have recognized their statutes pretrial filing and service requirements serve an entirely different purpose: they afford the accused adequate time to make a fully informed decision whether to plead or stand trial. *United States V. Johnson*, 944 F.2d 396, 407 (8th Cir. 1991)

Requiring notice before trial "allows the defendant ample time to determine whether he should enter a plea or go to trial, and to plan his trial strategy with full knowledge of the consequences of a potential jury verdict. See *Johnson*, 944 F.2d at 406-07

The Applicant simply points out to this court that he was not given any opportunity to make a decision to plea, fully knowing the consequences or stand trial to the same effect.

Constitutional Ineffective Assistance of Counsel

Demonstrating such ineffectiveness requires a showing "that counsel's performance was deficient" and "that deficient performance prejudiced the defense".

Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed2d 674 (1984); Kimmelman v. Morrison 477 U.S. 365, 383, 106 S.Ct. 2574, 91 L.Ed2d 305 (1986)

Particularly the relevant error is the failure to object to an impuissant filing, resulting in the imposition of a sentence not authorized by law.

The presumption that counsel was competent is the usual. See Strickland, 466 U.S. at 689, 104 S.Ct. 2052. To rebut the presumption, the Applicant must show that his attorney's representation was objectively unreasonable under prevailing professional norms and cannot be reconciled with sound strategy. See *id.* at 688-91 104 S.Ct. 2052, Scott v. State *Supra*.

The Applicant believes that he did make the requisite showing now and the times before this Appeal.

Straightfowardly the statute 44-53-375(c) puts the state and defense counsel on it's facial compliance. Each party must investigate prior offenses before they begin trial. From the face of the trial record it is evident the state was unprepared

for a guilty verdict and enhancement procedures thereafter. Dewitt V. South Carolina Dep't of Highways and Public Transp. Supra

Likewise so was trial counsel who failed to object against any use of a prior record before the trial began. The state chose to proceed without a prior record with an intention to gain a greater sentence regardless of a well known safety valve found in the SCrimP, Rule 29 covering post-trial motions.

This is the precise foundation that the Applicant laid his cornerstone of issue prior to this Appeal and now within this Appeal. The trial judge took this case beyond the Second Circuit to the Fifth Circuit to perform a duty that there is no motion or order by the judge to do so. See, letter from ~~jam~~ James B. Hiers clerk of court at Bamberg notifying applicant of only order(s) by the trial judge (Reginald I. Lloyd) were orders of commitment. See, Commitment order dated February 19, 2004 signed by the judge as judge at the Second Judicial Circuit during this date. See, Order signed by Chief Justice Jean Toal Supreme Court of South Carolina concerning terms of court date July 11, 2003 and See, term of court schedule for the Second Judicial Circuit along with the Fifth Circuit court roster. All terms of court are pursuant to

Article 5 § IV provisions of the South Carolina Constitution. (Clerk's letter Appendix pg 22, Commit Order pg 23

(Order from Chief Justice Appendix page 24

A question that is not decided is one of importance. Can a Judge decide a new material matter not before his trial of a case? *Shillito V. Spartanburg* 54 S.E.2d 521 (S.C. 1949) answers this question in the negative. The jurisdiction and power of a judge is limited in the term of court rule. It does not contemplate that after he had left the circuit, he shall decide a matter which has ~~not~~ not been submitted to him or heard by him while holding court in such circuit. No authority is given to him to determine, hear and determine new matter.

The record clearly shows that the state failed to produce prior convictions while forcing this case to trial before it was ripe. The judge did not ascertain what could be used as a prior conviction. Neither did the state file a post trial motion "timely" regarding or citing priors intended to be used at a later scheduled date before judge Lloyd as contemplated by the term of court rule. A rule "not" of Subject Matter Jurisdiction. *State V. Campbell Supra.*

Trial counsel failed to object to all of the misconceptions of the law, which ultimately became the factual disadvantage to the petitioner on appeal. *Hines V. Farr*, 235 S.C. 436, 112 S.E.2d 33

The respondent resisted the motion upon the ground

(S.C. Judicial Calendar Appendix Pg 25-28

that the assignment was not before the court during the trial of this action.

In this instance, counsel's failure to call to the court's attention to the state not filing a Rule 29 post trial motion was no mere garden variety blunder. Where, as here, an attorney fails to raise an important, obvious defense without any imaginable strategic or tactical reason for the omission, his performance falls below the standard of proficient representation that the Constitution demands. *Kimelman V. Morrison*, 477 U.S. 365 *Strickland V. Washington* *Supra*. *State V. Scott* *Supra*., *State V. Best* *Supra*, *State V. Campbell* *Supra*.

CONCLUSION

Pursuant to SCRAP RULE 243(C), the petitioner contends that the ruling in the lower court was decided on an Error of Law. The case law cited herein also affirms the petitioner's position.

Moreover the Constitutional Provisions are binding and are in full force of this petition.

For example *Suber V. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007) determining guilty plea issues, it's proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Voluntariness of a guilty plea is not determined by an examination of a standard conduct made by the sentencing judge alone, but is determined

from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing *Roddy v. State* 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). "The long standing test for valid guilty pleas is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to a defendant. *Hill v. Lockhart* 474 U.S. 52, 56 (1985) (quoting *North Carolina v. Alford* 400 U.S. 25, 31 (1970)).

In reviewing the PCR court's decision, an appellate court is concerned only with whether any evidence of probative value exists to support that decision. *Smith v. State*, 369 S.C. and will uphold those findings of the PCR court when there is any evidence of probative value to support them, and will reverse the decision of the PCR court when it is controlled by an error of law *Suber*, 371 S.C. at 558-59, 640 S.E.2d at 886.

The practice of law in this case and particularly its setting has been well established such a long time ago, that is, even in the common law. Rule 29 SCrimP frames the proscribed time limitations and its construction within the rule. In *Campbell* 376 S.C. at 215 a trial judge is without authority to pursue a case after the term of court has adjourned *State v. Best*, 257 S.C. 361, 186 S.E.2d 272 (1972) Each week of court is a separate term *State v. Mixon*, 275 S.C. 575, 274 S.E.2d 406 (1981) The two exceptions to this rule: a timely post trial

motion and a motion for a new trial on after discovered evidence. Neither motion were filed in this case and the PCR court has made the incorrect decision on this well established practice of law. See also Burns v. Babb, 3 S.E.2d 247 at 249 when a post trial motion was "marked heard" it gave the judge full authority to hear that motion

Since the SCrimP came in to effect timely motions are mandatory in filing. See Eberhart 546 U.S. at 17, 126 S.Ct. 403 (distinguishing between "lack of subject matter jurisdiction" and courts obligation to "observe the clear limits of Rules of Criminal Procedure when they are properly invoked"). (Counsel failed to call this to the attention of the court and this was addressed and ruled as an accommodation to the petitioner. Also the order cited the raised issue as a subject matter jurisdiction rule. When clearly the testimony and evidence was not argued as ruled on by the PCR court (3) separate occasions.

In Carlisle v. U.S. 116 S.Ct. 1460 (1996), District court had no authority to enter post verdict judgement of acquittal for drug conspiracy where defendants motion was untimely.

17-27-90 directs the petitioner to raise issues of ineffective assistance 17-27-80 binds the PCR court judge to rule on the raised question(s) of Constitutional Law. This case has never been decided and has denied the petitioner Due Process of the

constitutional question of trial counsel's failure to object and advocate. Washington V. State Supra.

Finally the state was granted immunity from application of the well established practice of law in South Carolina. The position of the petitioner leaves him simply dumbfounded of how this issue went unrecognized, or is the PCR judge blindly applying the law in this petition.

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Jerome A. Owens, #299108,
Applicant,

Case No. 2012-CP-05-0046

v.

**ORDER DENYING APPLICANT'S MOTION
MOTION TO ALTER OR AMEND
PURSUANT TO RULE 59(e), SCRPC**

State of South Carolina,
Respondent.

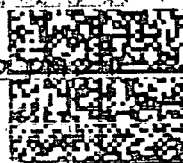
This matter comes before this Court by way of an application for post-conviction relief filed February 27, 2012. In its Return, Respondent requested that the action be summarily dismissed. A Conditional Order of Dismissal was signed on July 31, 2012, and filed on August 8, 2012. Applicant was served with the Conditional Order of Dismissal on August 21, 2012. Applicant responded to the Conditional Order of Dismissal, re-alleging various jurisdiction issues previously asserted either in his present action or in previous actions for post-conviction relief. A Final Order of Dismissal was issued on October 30, 2012 and filed on November 7, 2012. Applicant filed a "Rule 59(e) SCRPC Motion to Alter or Amend Judgment" on November 27, 2012.



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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

Honorable Doyet A. Early, Circuit Court Judge Presiding

CASE NO. 2012-CP-05-46

Jerome A. Owens, #299108, Appellant,

v.

State of South Carolina Respondent.

NOTICE OF APPEAL 59(e)

MOTION . . . ,

Jerome A. Owens, the Appellant herein, appeals from the Order denying Applicant's motion pursuant to Rule 59(e), SCRPC filed of record in the Office of the Clerk of Court for Bamberg County on December 16, 2012 and received by the undersigned petitioner on December 27, 2012 which order denied motion to Alter or Amend the ruling of the court. A copy of the Order Denying Rule 59(e) motion is attached hereto. January 25 2013 Ridgeville, S.C. 29472

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

Doyet A. Early III, Circuit Court Judge

CASE NO. 2012 - CP - 05 - 46

| Jerome A. Owens 299108 Petitioner,

State of South Carolina Respondent.

PETITION FOR WRIT OF CERTIORARI
RULE 59(c) SCRPC

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Question Presented

Did the lower court err in denying the Rule 59(c) motion Pursuant to Case of State V. Campbell 376 S.C. 212, 656 S.E.2d 371 (2008)?

The petitioner has framed his question for the PCR judge correctly and in several ways. The petitioner also believes that he has shown the lower court a material and factual basis for a hearing and relief on the merits. And that the PCR court judge's ruling(s) were improper.

In *State v. Best* 257 S.C. 361, 186 S.E.2d (1972) the jurisdiction and power of a circuit court judge is determined in this Court's decision. The term of court rule does not render after a judge has departed from a circuit, he will decide any matter which has not been submitted to or heard by him while presiding in such circuit.

From the very face of the record in this case the judge, Judge Reginald I. Lloyd did not ascertain obtain or identify, "what would be used" as a prior offense in this case. Not at anytime during the trial of this case or before the jury was sworn in or after the jury verdict during the term of court, manifesting his intention so desired. See Appendix with all relevant transcripts of the issue at

Brewton v. Shirley 93 S.C. 365, 76 S.E. 988 (1913) is a case that clarifies the manifest intention of a circuit court judge on his part with any action to dispense with the requirements in regard to amendments. That is a motion he sustained at a particular term of

court that he was assigned to hold in a circuit not his own.

The petitioner was not notified about a day to be seen by Judge Lloyd, nor did he immediately schedule a court date at Bamberg General Sessions before he adjourned that term of court sine die.

The rule contemplates that a motion must be heard and duly submitted. All of which means all facts, evidence, papers, and material matters, subject to his decision are previously provided to the judge before he returns to his home circuit.

Best 186 S.E.2d at 276 No authority is given to him to hear and determine new matter eventhough such new matter may arise in the same case. To hold otherwise would result in confusion and inconvenience in the trial of cases and in the administration of justice.

At the time judge Lloyd left Bamberg the Second Circuit, no motion was pending before ~~in~~ him to amend his decision or to clarify what decision he would render at a scheduled date. See Appendix new trial motion hearing February 4, 2004

The only post trial motion filed at the Office of the Clerk of Court, heard and denied immediately.

The question was and the question remains... Did the State have to file a post trial motion with the Bamberg County Clerk of Court to continue

Judge Lloyd's authority? The well established practice of long standing case law and most recent case of State v. Campbell 376 S.C. 212, 656 S.E.2d 371 proves the affirmative, "citing the Rules of Crim Proc. Rule 29

With this holding the State did not attempt to file any motion required by the Rule governing post-trial motions. The State was beyond timely and with any reasoning that once Judge Lloyd denied the motion for a new trial for the defense which was unruly but timely, the State was required to file a post-trial motion.

And without doing so, trial counsel should have objected.

This was the precise argument prior to this petition opposite of the State's contention and like the State in Best, the Petitioner objects to the authority of the court on "all" fronts. This sentence is illegal.

Article V § 4 Powers of the Chief Justice, rules, practice of law and discipline of persons admitted. In part it reads relevant to this issue. The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system.

Article V § 14 Rotation of Judges says: Judges of the Circuit Court shall interchange circuits and all judges shall be systematically rotated throughout the state as directed by the Chief Justice. State v. Best Supra.

February 19, 2004 judge Lloyd was not a judge assigned to the Second Circuit. The Sentencing transcript reveals that on February 4, 2004 there was no "scheduled day" for the judge to render his afore mentioned decision on the case he "took" with him from Bamberg County.

Simply put, according to the case law in the meaning of the rule, the duly made submitted motions are only left open for decision, that must be in accordance with the motions or submitted materials that were in possession of the judge before he departed from his assignment at a circuit other than his own. For example See, *Barnett v. Piedmont Shirt Corp.*, 230 S.C. 34, 94 S.E.2d 1. An amendment to an order, sustaining demurrer was final regardless of the judge's intent he could not amend his order for the plaintiff. Compare *State v. Warren* 392 S.C. 235, 708 S.E.2d 234 (2011) *State v. Campbell Supra*

+ And without the necessary requirements contemplated by the Rule, Petitioner contends his pending case should have become final at Bamberg by a judge with vested authority to pass sentence legally in his case *State v. Knotts* 70 S.E. 400, 50 S.E. 9 (S.C. 1905) Case pending where at prior term the judge left assignment without passing sentence. Court held judge lawfully presiding at term after prior term had authority to determine sentence.

Conclusion

The Petitioner submits the following:

February 19, 2004 judge Lloyd

This court should not uphold the findings of the PCR judge in this case. His findings have no probative value and the evidence used to support his rulings are insufficient. See *Suber V. State*, 371 S.C. 554, 558-59, 640 S.E. 2d 884, 886 (2007). This court should reverse the PCR judge ruling because it is based on an error of law. *Kerrigan V. State* 406 S.E. 2d 160 (S.C. 1991).

This Court ruled on this issue most recently in the case of *State V. Campbell* 376 S.C. 212, 656 S.E. 2d 371 (2008) citing *State V. Gentry* 363 S.C. 93, 610 S.E. 2d 494 (2005), we emphasized that subject matter jurisdiction is the power of a court to hear and determine cases of a general class to which the proceedings in question belong.

A circuit court judges power to hear criminal cases is not eliminated once a term of court ends; the (power) is lost only as to the particular criminal case that the judge heard within a particular term of court. Given *Gentry*, the term of court rule is not a rule of subject matter jurisdiction. *Campbell* 376 S.C. at 216

This Court further determined in their ruling Pursuant to the case law and Rule 29, the plea judge lacked authority to re-sentence appellant because the state "did not" file a timely Rule 29 motion.

The only question the Petitioner can ask in

final reasoning is one of sincere purpose. How can a defendant, given his Constitutional Rights to stand trial are less protected; than a defendant surrendering those same rights to plea?

In Campbell Supra, the distinction in this case is the Petitioner stood trial being guaranteed all his rights under both Constitutions, Federal and State.

And the question was one of bedrock principle in this great nation. Was trial counsel ineffective in his role as required by his professional duty but moreover Strickland V. Washington 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) Although a reviewing court must consider the whole of the record, a single, serious error nonetheless can support a claim of ineffective assistance of counsel See, Kimmelman V. Morrison 477 U.S. 365, 383, 106 S.Ct. 2574, 91 L.Ed.2d 305 (1986)

A defendant can not request untimely relief see, Carlisle V. U.S. 116 S.Ct. 1460 (1996), District court had no authority to enter post verdict judgement of acquittal for drug conspiracy where defendants motion was untimely.

State V. Warren 392 S.C. 235, 708 S.E.2d 234 (2011)

And the state must be held to the same standard State V. Campbell Supra.

Counsel for the petitioner was in fact ineffective on all fronts

Effective assistance of counsel applies at sentencing
Williams v. Taylor 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed. 2d
389 (2000) citing Strickland v. Washington.

The state was allowed immunity to be able to disregard
the rules and case law without objection or argument from
defense counsel.

The PCR judge denied the petitioner a fair
and just ruling on the merits. And due to the irregularities in
his judicial process he has not received due process at any
course of procedure in this case See Washington v. State
478 S.E.2d 833 (Petitioner cites this case only on it's holding
relying in part of PCR judge in that case failed to rule on
the issues raised to that court at that time. 1. Note

Petitioner argued term of court Rule in all prior filings
of ineffective assistance of counsel.....

The lower court decision is improper and should be
reversed.....

By Jerome A. Owens

Jerome A. Owens #299108
Lieber Corr. Inst.
Cooper B-48
P.O. Box 205
Ridgeville, S.C. 29472

1.) NOTE

The State's return to Petitioner's Rule 59(e) SCRPC Motion to alter or amend judgement denying relief as final is misplaced. The State claims the Petitioner has failed to raise an allegation that was properly raised but not ruled upon by the post-conviction relief Court.

In *McCray v. STATE* 305 S.C. 329, 408 S.E.2d 241 (1991) S.C. code Ann § 17-27-80 (1976) requires the PCR court to make specific findings of fact and state expressly its conclusions of law. See also, *Marlar v. STATE* 375 S.C. 407 653 S.E.2d 266 (S.C. 2007)

The term of court rule is not a rule of subject matter jurisdiction. *State v. Campbell* Supra.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM BAMBERG COUNTY
Court of Common Pleas

Honorable Doyet A. Early, Circuit Court Judge Presiding

CASE NO. 2012-CP-05-46

Jerome A. Owens, #299108 Appellant,

V.

State of South Carolina Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal for Rule 59(e) Motion SCRCP on the Respondent by depositing a copy of it in the United States Mail, postage prepaid on January 25, 2013 addressed as follows:

Megan E. Harrigan AAG
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By Jerome A. Owens
Jerome A. Owens #299108
Lieber Corr. Inst.
Cooper B-48
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and that I have filed a copy of the Notice of Appeal Rule 59(e) motion in the Office of Clerk of Court for Bamberg County on this day January 25 2013

STATE