

STATE OF SOUTH CAROLINA

In The Supreme Court

Eugene C. Griffith Jr. Judge

York, County South Carolina

Affidavit; Motion To Relieve Counsel

Pursuant to, Faretta v. California, 422

U.S. 806 (1975)

**RECEIVED**

SEP 03 2024

S.C. SUPREME COURT

Ben Robert Stewart, 223006

Petitioner

v.  
State of South Carolina,

Respondent

Appellate Case No: 2023-001478

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

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## Statement of Case

The Petitioner/Appellant Ben Robert Stewart, appeals an Order of dismissal Pursuant to Post Conviction Relief on August , 2024 by The Honorable Eugene C. Griffith Judge. A timely notice of appeal was filed, and the Case was forwarded to the Appellate Defense from PCR Counsel Ola A. Johnson Esquire, the States Attorney General office was represented by Zachary Jones.

Originally the PCR Application and Memorandum of Law in Support including exhibits was filed December 9, 2013, the State refused to appoint counsel for three years for no apparent reason other than to delay the proceedings because on several Notice, Affidavit, and Writ of Prohibition and Request For Expedited PCR Review between 2013-2016 because noted and cited and warned that vital witness Val Hudson was illing and would indeed irreparably be lost which occurred July 2019. However, her affidavit sworn original affidavit was filed Dec. 9, along with the PCR application and relevant documents. Throughout these

proceeding the State was cited each time for its failure to respond to the mandated Post conviction relief allegations in which they elected not to.

To the forefront, the Applicable Law and Standard of Review was filed on the same day as the PCR Application and appointed counsel Mr. Johnson, incorporated citation and authority, applicable law as stated on pg. 1. of each of attorney's two Amended petitions. leaving a total of 35 thirty-five allegations and the States proposed order signed by the PCR Court did not cite controlling law.

Further, there are several stages of clear falsity that the PCR transcript refute, and the Order of dismissal was not stamped transmitted by the Clerks office pursuant to Rules of Court of PCR.

Appointed to represent Petitioner on this appeal is Sarah E. Shipe Esquire, who included several document in this filed Appendix to the Court while any of these documents were entered into evidence in the PCR, in otherwise the evidence was not before the PCR court, more telling the transcript of Petitioners trial was not submitted into

evidence but the State based its erroneous and false order of dismissal on these documents and evidence and are being cited as a default against the State pursuant to Rule 55(e) also citing Federal Rule of Procedure 55(e).

With the extraordinary circumstances, the Barker v. Wingo standard and State v. Hansberger, quoting Barker supra; with a ten years four months delay and the State refusing to answer the allegations clearly puts them at aim for default.

Petitioner requested for Attorney Shippey to correct these issues and she refuses, request to Relieve counsel is included.

Therefore, in the interest of justice this appeal is sought for a Vacate or Remand ...

## Claims Presented

1. Motion To Vacate, determining the, *Barker v. Wingo*, Standards depriving Petitioner of speedy remedy / trial.
2. Motion To Vacate, pursuant to, *State v. Hunsberger*, holding and circumstances relating to Petitioner.
3. Motion To Vacate, because, *Kneece v State*, prejudice shown and proven by Petitioner in delay by State.
4. Motion To Vacate, whereas, *Stokes v. Stirling*, 64 4th.131 (4th Cir 2023) and the State forfeited it appellate review because 17-27-80 s.c. code and 71.1 (f) is violated, and
5. Motion To Remand, because *Shinn v. Ramirez*, 596 U.S. 366 (2022) the State's order is "so incomplete as to be very prejudicial to appellant citing *Austin v. Taylor*, 284 S.C. 414, 326 S.E.2d 656 (1985) quoting  
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South Carolina State Highway Dept v. Meredith, 241  
S.C. 306, 128 S.E.2d 656 (1985)

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6. Remand requested pursuant, Kemp v. United States, 596  
U.S. 528 (2022) because the Applicable law and  
Standard of Review was not used, nor was fact finding  
pursuant 17-27-80 S.C. Code Ann.

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7. Remand is required when the State Defaults pursuant to  
Rule 55(e) SCRPC, because it based its erroneous order  
of dismissal pursuant to 28 USCA § 2254 (e)(2) it  
violates due process under State and Federal law,  
under 17-27-10, et seq; 28 USCA § 2254.

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8. Is Petitioner's Sixth Amendment to a speedy trial;  
and Fourteenth Amendment for due process, equal  
protection violated with irreparable damages?

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9. Does the PCR Court's order of dismissal warrant

being insufficient due to incorrect fact finding pursuant 17-27-80 s.c. code ann.

10. Did the State Default its Post Conviction Relief arguments using Clayton v. State, 278 S.C. 655, 301 S.E.2d 133 (1983)

11. Did the State forfeited its Post Conviction Relief argument using misapplied controlling law, false facts not supported, and failing to actually respond to the allegations raised in the PCR application; and amended petitions?

12. Did the order of dismissal violate 71.1(f) and therefore void?

## Applicable Law And Standard of Review

This Court has Jurisdiction to this appeal pursuant Rule 243 SCACR, also South Carolina Constitution Article V, § 4, 5, South Carolina Constitution, Article I § 3; Article I § 14, United States Constitution Sixth and Fourteenth Amendment.

In, *Faretta v. California*, 422 U.S. 806 (1975), held, that a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so, and that the State may not force a lawyer upon him when he insists that he wants to conduct his own defense.

## Applicable Law and Standard of Review

"This Court has Jurisdiction to correct errors of law only"; see; Edwards v. Edwards, 239 S.C. 85, 121 S.E.2d 432 (1961) Article V, 4, 5, South Carolina Constitution, Article 1 § 3; Article 1 § 14, United States Constitution, Sixth and Fourteenth Amendment

S.C. Constitution Article 1 Section 3,  
S.C. Constitution Article 1 Section 9,  
S.C. Constitution Article 1 Section 14,

17-27-70, South Carolina Code Ann,  
17-27 80, South Carolina Code Ann,

71.1 South Carolina Post Conviction Act  
(a), (c), (d), (e), (f), (g)

Rule 243, SCACR, (a)

SCRCP Rule 54 (b)  
SCRCP Rule 55 (a) (e)

# Applicable law and Standard of Review

## Conflict of interest,

Rubin v. Gee, 292 F.3d, 396 (4<sup>th</sup> Cir 2002)  
quoting Cuyler v. Sullivan, 466 U.S. 335 (1980)

Nance v. Ozmint, 367 S.C. 547, 626 S.E2d  
878 (2006) inept representation, quoting U.S.  
v. Cronis, 466 U.S. 648, 104 S.Ct. 2039, 80  
L.Ed 2d 657 (1984)

## Misapplied controlling law,

Kemp v. United States, 596 U.S. 528, 142 S.Ct.  
1856, 213 L.Ed 2d 90 (2022) error of law

## wavier, default, forfeited,

Palmetto Construction Group, LLC v. Restoration  
Specialist, LLC, 428 S.C. 261, 834 S.E 2d 204  
(2019) Mitchell v. BMW Manuf. Co., LLC (2020 WL 6587068)

United States District South Carolina Spartanburg Div Aug.  
5, 2020); Stokes v. Stirling, 64 F.4th 131 (4th Cir 2023)  
State forfeited its appellate argument.)

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# Applicable law and Standard of Review

Prejudice shown,

Barker v. Wingo, 407 U.S. 514, 530, 92 S.Ct. 2183, 33 L.Ed.2d 101 (1972); Kncec v. State, 269 S.C. 177, 236 S.E.2d 746 (1977)

Lock of Record,

Shrin v. Ramirez, 596 U.S. 366, 142 S.Ct. 1718, 212 L.Ed.2d 713 (2022); South Carolina State Highway Dept. v. Meredith, 241 S.C. 306, 128 S.E.2d 179 (1962)

# AFFIDAVIT; MOTION TO RELIEVE COUNSEL PURSUANT to, Faretta v. California, 422 U.S. 806, S.Ct. 2525, 45 L.Ed 2d 562 (1975).

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I, Ben Robert Stewart, 223006 certify that the foregoing is true and correct upon the best of knowledge and subject to penalty for perjury, and I am the Petitioner/Appellant in this instant case hereafter and says the following:

## FACTS AND ARGUMENT

1. Pursuant to an appeal from the PCR Court, this Petitioner is in response to the Supreme Court of South Carolina, Order, August 13, 2024, see; Exh D.) - in which Petitioner filed, Affidavit, Motion To Relieve Counsel And Vacate or Remand for Default, received June 27, 2024 by this Honorable Court.

2. Petitioner demonstrated that Appellate Defender, Sarah E. Shipe, ignored filing and communications and also request necessary to properly argue this instant case before this Court, and otherwise display actions established as a breakdown in communication, further Petitioner believes there is a conflict of interest; a lack of diligence and indeed no communication . . .

whereas Attorney Shipe, was cited to the South Carolina Disciplinary Counsel in two instances see; Exh C2 Disciplinary Complaints dated 01/16/24 and 06/28/24, enclosed.

3. Petitioner, requested this Honorable to allow out-side counsel of the Appellate Defense due to citing direct appeals attorney Wanda H. Carter Esquire who works at the same employment as attorney Shipe thereby leaving Attorney Carter's stewardship an issue on appeal where she failed to defend it at April 17, 2023 Post Conviction Relief hearing, and allowing false and misleading averment argumentation in the Order of dismissal at pg 4. see; Exh #4, pg 4, where it is totally false of the Order to state that, "At the outset of the hearing, Applicant indicated he wished to withdraw Allegations (i) and (1) of his original application, as well as Allegation 1 of his second amended application". This is conclusively refuted and proved incorrect as to fact finding that this did not occur: Note,

"Could you describe why you feel appellant counsel was ineffective for failing to appeal the court in denying the directed verdict motion?" see; Appendix PCR hearing at 14/15, or at 15; Exh #22 at 15. Therefore, it could not have been withdrawn.

Petitioner further demonstrates these identical false and misleading averment-argumentation in the Order of dismissal at 7. Order of dismissal, at Exh #4, Note,

"Applicant's original application and Allegation 5 of his amended application also mention Val Hudson as a potential witness Trial Counsel allegedly failed to interview. However, Applicant did not produce her testimony at the evidentiary hearing. Therefore, he has failed to prove Trial Counsel was ineffective for failing to

... "interview or call her, see, e.g., *Martin v. State*, 427 S.C. 450, 455, 832 S.E. 2d 277, 279-80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call witnesses must produce those witnesses or their testimony at the PCR hearing)".

see Appendix at 1420 . also Exh #4 at 7. footnote) and Exh #22 at 20-22 PCR(hearing)

4. Petitioner filed Val Hudson sworn affidavit-original with the York County, Clerks office December 9, 2013 as Exh A2 Val Hudson affidavit dated February 22, 2013 including the PCR Application; and Memorandum of Law in Support and other Exhibits, and it is bad faith in conduct to state otherwise when the Defense Attorney Ola Johnson Esquire, read the late Val Hudson affidavits into the record, see; Appendix at 1420; Exh #22, at 20) Note:

"In the State of South Carolina, Affidavit, I, Lauanda Vabeen Hudson, hereby swear of affirm under penalties for perjury pursuant to 16-9-10 South Carolina Code that the following statements are true and correct upon belief or information"...

Also see; pg. 29. of Affidavit Motion To Relieve Counsel And Vacate or Remand for Default) to expound the contents and indeed view its relevant part as to "tell the truth of what happened at my friend, Manday Bishops place on the night in October, 2006, when Reed Allen, who had been parting with us, lied that Mandays brother,

... "Ben Stewart, gave him a gun in a bag". see; Appendix at 1420, and 1421; Exh #22 at 20-21. PCR hearing also proves falsity.

5. This also conclusively refuted and proved the incorrectness of the fact finding assesment by the order of dismissal clearly violating 17-27-80 South Carolina Code Ann.

6. Petitioner further demonstrated that several responses and replies also Affidavits, Notices, and even Writ of Prohibition and Mandamus and Request For Expedited Review, were filed for reasons of receiving a respond from the State regarding the allegations and issues in this instant PCR matter and the State refused and elected not to deny in responsive pleadings, see; Rule 8.(d) SCRCP, also see; 17-27-70 South Carolina Code Ann. thereby waiving or defaulting or forfeited appellate arguments whereas the State falsely stated that in position of Clayton v. State

7. Petitioner revealed that, Exh #2. Memorandum of law at 32-33 (Dec. 9, 2013); Exh #10. Applicants Return, (May 2014); Exh #9. Verified Complaint, (June 2015) and Exh #7 Notice, Affidavit, Motion, (January 2016) asserted a

clearly invoked right to a speedy remedy; surcure<sup>u</sup> the vital witness Val Hudson<sup>u</sup>, however with the States waiting game in effect irreparably she is lost as expected. see Exh B12 Lawanda (Val) Hudson, Obituary July 12, 2019 also see; Affidavit, Motion To Relieve Counsel And Vacate or Remand for Default, at pgs 7, 8, 9,

8. Petitioner forwarded instructions and requests to Attorney Shipe, see; Exh #12; Exh #14 dated 03/13/19 Exh #14 dated 03/19/24. These letters outline substantial constitutional issues and procedural safeguards to prevent an default and professional conduct and misconducts that should have been cited by any defense or prosecutor attorney however, these communications were ignored for example, PCR Counsel did not obtain a valid court order to be relieved as counsel on this instant appeal; (71.1g), claims were abandoned by PCR and Attorney Shipe and Ms. Shipe only filed one argument for briefing and the remaining ( ) claims and issues were not filed in a 59 Motion see Maples v. Thomps, 525 U.S. 266 (2012) also see Fishburn v. State, 427 S.C. 505, 832 S.E. 2d 584 (2019). (excuse for default) furthermore, in reasoning with mistake Petitioner submitted Exh #17, Exh #18, Exh #19, Exh #20, in an effort as display to recap, Fishburn v. State, circumstances, notifying PCR Attorney, Attorney Shipe, Attorney General office, and the PCR Court, stating; "We do not place the blame on a single party below  
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... "for an insufficient PCR order. The preparation and finalization of a PCR order is often a collaborative effort, the prevailing party often prepares a proposed order for the PCR Court"...  
see Fishburn supra; again however Petitioner was ignored, Maples supra,

9. Petitioner also believes and requested the State be cited for default Judgment and apply the Barker v. Wingo 407 U.S. 514 (1972) standard, see; Affidavit, Motion To Relieve Counsel And Vacate or Remand for Default, at pgs 5-6, stating, "I also request the Barker v. Wingo 407 U.S. 514 (1972) standard be applied in this instant case where prejudice exist since there was several warnings that exculpatory witness could be lost due to sickness and due to the State refusal to appoint counsel since the initial PCR filing December 9, 2013 until June 23, 2016 and PCR counsel lacking indiligence or otherwise not filing a proper default judgment" (end of quote) (filed Feb. 11, 2023).

10. Petitioner respectfully submits that Attorney, Sarah E. Shipe, is indeed a officer of the Court and has violated Rules of Professional Conduct in this feild, and therefore her conduct should be cited, in the interest of justice according to the Honorable Courts relations respectively.

11. Petitioner points to (3) violations of professional conduct that unfairly deprived Petitioner of due process and equal protection of the laws see; Article 1 § 3, South Carolina Const.
12. Petitioner points to (3) violations of misconduct that continues to deprive Petitioner of due process and equal protection of the laws namely see United States Constitution VI Amendment "right to assistance of counsel for his defense".)
13. Petitioner expanding on such conduct of violations of professional conduct, the basis of competence is lacking whereas in Ms. Shipe letter as Exh C-12, explains that she only can argue what has been argued in the lower Court / PCR Court. see; Exh C12, this attorney indeed violated 1.1, in representing Petitioner when ineffectiveness stewardship is pointed toward her employee Wanda H. Carter, Esq. diligene 1.3 is violated by Ms. Shipe because on the outset any viewer can conclude that reasonable efforts was not applied to this instant case. see; Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006) quoting U.S. v. Croniz, 466 U.S. 648 (1984)

14. Petitioner's complaint in the disciplinary counsel for misconduct and a conflict of interest because such actions deprived Petitioner of rights contained within the Bill of Rights, Constitutional statutes knowingly and not negligently and intent is clear where these actions are prejudicial to the administration of justice because any attorney would know the Rules of Court and to undermine one is indeed intent; therefore this attorney in this instant case is in violation Rule 407 SCACR, Rule 8.4 (a)
15. Petitioner demonstrates that Attorney Shipe violates Rule 407 SCACR Rule 8.4(d) engage in conduct involving dishonesty, fraud, deceit or misrepresentation, in filing and arguing a transcript that was not submitted into evidence and allowing prior attorney's professional misconduct to infect the case before her and not correct the procedural aspect, see; Rule 243 SCACR (Certiorari for PCR), and the Supreme Court cannot review evidence that was not before the lower court; also this deprived Petitioner equal protection of the laws as to federal review see; 28 USC A 2254 (e) (2) where she has knowledge that PCR counsel violated, 28 USC A. 2254 (c), furthermore the order of dismissal is violated, that Attorney has submitted to this Court in the Appendix whereas 71.1(f)

is clearly violated, not filed with the York County Clerks office but appears to be "received" by the Supreme Court of South Carolina.

16. Petitioner's circumstances, in a need to relieve counsel is based on following Court norms and violating the same. see; Nance v. Cement supra, Maple supra
17. Petitioner's outlined facts herein stated proves that Attorney Shipe, violated Rule 407 SCA CR Rule 8.4 (g) because the order of dismissal statements of false and misleading fact finding classified as Rule 9(b) fraud, and Ms Shipe indeed knowingly assist a Judicial officer in conduct that is a violation of applicable rules of Judicial conduct or other law.
18. Petitioner's motions for outside counsel dated Nov. 2023, Dec. 2023, Jan 2024 is the testament as to a Conflict of Interest in violation of Rule 1.7, whereas there would be expected litigation against her co-worker Wanda the Center Esq.
19. Petitioner's Writ of Certiorari filed by Attorney Sarah E. Shipe June, 2024 is not properly before this Honorable Court because the transcript cited by Ms. Shipe is not into evidence. see;

Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed 2d 562 (1975) standard.

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20. Petitioner demonstrated that his views of defending the instant case and Attorney Shippe's views are opposite and conflict is indeed apparent. see; Rubin v. Gee, 292 F.3d 396 (4th Cir 2002) held that petitioner's pretrial attorney who remained on defense team during trial in murder prosecution had an actual conflict of interest that adversely affected their performance and trial counsel's performance, thus denying petitioner effective assistance of counsel and warrant habeas relief. quoting Cuyler v. Sullivan, 466 U.S. 335 (1984) also Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006) quoting United States v. Cronin, 466 U.S. 648 (1984)

21. The Supreme Court of the United States In, Faretta v. California, held that a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so, and that the state may not force a lawyer upon him when he insists that he wants to conduct his own defense.

22. Relying exclusively on the holding of Faretta, the

Petitioner objects totally towards representation of any attorney working at the same employment as prior attorneys that was cited for ineffectiveness stewardship, moreover the presented claim by Attorney Shipe is in fact defaulted, thus establishing grounds for her removal is no more, respectively.

23. To the forefront, Petitioner's more colorable claims and citation, applicable law and standard of review is more suitable for this Honorable Court, that has powers to rule on extraordinary circumstances, see; *Barker v. Wingo supra*,

24. In *State v. Hunsberger* 418 S.C. 335, 794 S.E.2d 368 (2016) of Certiorari to the Court of Appeals, the Court held, (1) ten year delay between arrest and trial weighed heavily against State in Speedy trial analysis; (2) reasons for delay weighed heavily against State; (3) defendant's assertion of speedy trial right was neutral factor; and (4) defendant was prejudiced and his speedy trial right was violated. quoting, *Barker v. Wingo* 407 U.S. 51 (1972)

25. Petitioner submit these holdings in *Hunsberger* including

the ten years delay is precisely the cause and injury of the  
lost of Val Hudson, in this instant case in this PCR action,

26. The order of dismissal in this instant case is unacceptable  
and if the Court finds that it is acceptable the Petitioner  
respectfully reserves the right to press default for the  
effect in Rule 8. (d) also 17-27-70; 17-27-80 s.c. code  
ann, Kemp v. US, supra, 91.1 (f) rule 55(e) respectfully,  
and apply a defense for the § 2254 (e) (2) and (c)  
violations by State attorneys who aren't liable for these  
deprivations and assert Stokes v. Stirling, 64 F. 4th 131  
(4th Cir 2023) where State forfeited appellate argument quoting  
the Shinn v. Ramirez, 596 U.S. 366, 142 S.Ct. 1718, 212  
L.Ed 2d 713 (2022) and Petitioner would then prohibit the  
State from considering evidence from the PCR Court, due  
to the incomplete record and default; further, In South Carolina  
State Highway Dept. v. Meredith, 241 S.C. 306, 128 S.E 2d. 179  
(1962) held that where trial judge found that transcript of

argument made by counsel for respondent, to which exception was taken was so incomplete as to be very prejudicial to appellant, refusal to amend transcript so as to show such argument, refusal to amend transcript so as to show such argument, on ground that court had no authority to supplement or revise the record was error and if Court stenographer could not furnish transcript of such argument, then trial judge had duty to give some settlement and report in order that main appeal might be heard by Supreme Court. see; also *Austin v. Taylor*, 284 S.C. 414, 326 S.E.2d 656 (1985) held that transcript of record was patently insufficient to warrant a Review by the Court, citing, *South Carolina State Highway Dept. v. Meredith*, 241 S.C. 306, 128 S.E.2d 179 (1962)

27. More on the lines of procedural see; *Kneece v. State*, 269 S.C. 177, 236 S.E.2d 746 (1977) held (1) the failure to file an answer to postconviction petition within extended time granting of relief requested, absent showing of prejudice to petitioners from the delay, and moreover *Kneece supra*, stated, "The record fails to show any prejudice to

appellant from the delay by respondent in filing an answer citing *Herring v. State*, 262 S.C. 597, 206 S.E.2d 885 (1974)

Just as the Petitioner, Louie Howard Kneece, contended that respondent failed to file an answer to Petitioner for post-conviction relief and was therefore in default, in this instant case Petitioner submits the same thing and the record and several other factors conclusively proves that Petitioner is prejudiced.

28. Petitioner's Equal Protection, and Speedy remedy and also infliction from the State's irreparable injury in the lost of Val Hudson, is no question a due process and extraordinary-ordinary-added or otherwise *Barker v. Wingo* standards are met, respectively.

### Faretta's Standard

(a) elects to proceed without counsel

29. Petitioner, Ben Robert Stewart, further brings notice to this Honorable Court by way of this Affidavit; Motion To Relieve Counsel

herein verbatim as written to proceed without counsel and humbly declines acceptance for appointed counsel, Sarah E. Shipe, or any attorney that works from the Appellate defense office in Columbia South Carolina, because of the outlined reasons explained within this petition, therefore, after being competent and sound and my own free will I, Ben Robert Stewart, respectfully request to relieve Attorney Shipe, excluding and including a request for standby counsel.

## Faretta's Standard

### (b) Conduct own defense

30. Petitioner, Ben Robert Stewart, furthermore presents his own defenses) such displayed within Affidavit; Motion To Relieve Counsel And Vacate or Remand for Default before this Honorable Court, whereas an clear case of extraordinary circumstances exist and procedural error not at fault to Petitioner exist. Before the Supreme Court, the Petitioner filed:
1. Affidavit Motion To Relieve Counsel And Vacate or Remand For Default, June 27, 2024, Received, Filed June 21, 2024
  2. Petition For leave To Make And File Motion 60 (b), June 24, 2024.
  3. Subpoena Duce Tecum, June 27, 2024.

4. Affidavit, Motion For Substitution of Parties, July 18, 2024

5. Amendment to Brief only Applicable law and Standard of Review, and request, Stewart v. State 2013-CP-46-3731; 2023-001478 to Order lower Court to correct filing, July 25, 2025

See Exhibit # 25 enclosed).

31. Petitioner respectfully request that this Honorable Court exercises it's powers to consider these petitions if the Court does not find relief contained in the Vacate or Remand For Default presentment with the exception to the Substitution of Parties Petition but the request on pg 2." is being sought in attempt to receive the Respondent's Return pursuant to 243 Section (9)."
32. In light of Petitioner's response to this Courts Order, August 13, 2024, petitioner submit's the Applicable law and Standard of Review including this Honorable Court's Faretta's, Standard exception:
33. Petitioner furthermore request that Attorney Sarah E. Shipe, Writ of Certiorari filed June 3, 2024, be declined for consideration by this Honorable Court.

## Conclusion

34. Petitioner, Ben Robert Stewart, pro se presented extraordinary circumstances see; *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2183, 33 L.Ed. 2d 101 (1972) where rights has been deprived; an irreparable injury; lost of Val Hudson, and speedy trial right violated. see; *State v. Hunsberger*, 418 S.C. 335, 794 S.E.2d 368 (2016)

There is an incomplete record, expounded on by the State's officers proven false because the transcript was not entered into the record of the PCR Court, see; *Shinn v. Ramirez*, 596 U.S. 366, 142 S.Ct. 1718, 212 L.Ed. 2d 713 (2022) and therefore forfeited any original of genuine argument see; *Stokes v. Stirling*, 64 F.4th 131 (4th 2023), and the appendix transcript of the Feb, 2009 trial is before this Court, served by Attorney Shipe and its practice of such warrant insufficient for review by this Honorable Court see; *Austin v. Taylor*, 284 S.C. 414, 326 S.E.2d 656 (1985) quoting *Meredith supra*.)

The acts described herein violated the Rules of Professional Conduct, Rule, 407 SCACR. see; *Nance v. Ozmint, supra, Croniz supra; Rubin v. Gee*, quoting *Coyler v. Sullivan supra*, indeed there is a shewing of a denial of the Sixth Amendment and Fourteenth Amendment as well as S.C. Const. Art 1 § 3; S.C. Cent. Art 1 § 14.

## Relief

1. Petitioner respectfully request this Honorable Court to Relieve Counsel, Vacate Sentence and Judgment and bar-reprosecution for the Barker v. Wingo violation for the intentional delay or;
2. To Relieve Counsel, Vacate Sentence and Judgment and Remand to the lower Court for a Rule 55 default Judgment with a showing of prejudice pursuant to            Kneec v. State,
3. To Relieve Counsel, Vacate Sentence and Judgment and apply, Stokes v. Stirling, 64 F.4th 131 (4th Cir 2023) citing 2254 (e) (2) the State forfeited any argument where the record was not entered into evidence at the PCR hearing, and facts stated in

Order of Dismissal were false and misleading and Petitioner is prohibiting the State from considering evidence from the PCR Court, and enter judgment for the forfeited appeal and because the order of dismissal was not filed pursuant to 71.1 (f).

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4. To Relieve Counsel Vacate sentence and judgment for a speedy trial and due process violation,

To Relieve Counsel, Vacate sentence and judgment and remand to the lower Court with instructions to dismiss PCR proceeding and release from custody for Barker v. Wingo, showing.

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5. To Relieve Counsel, Vacate Sentence and Judgment, Remand to lower Court with instructions to bar-prosecution, for intentional prosecuter misconduct and enter a default,

Judgment pursuant to Rule 55 (a) (e).

6. Grant Motion To Relieve Counsel and Remand and Vacate Sentence and Conviction and case to the PCR Court to dismiss the Application with prejudice, for violation of due process, S.C. Const. Art. 1 § 3, and Fair trial S.C. Const. Art § 14.
7. Grant Motion To Relieve Counsel and Remand and Vacate Sentence and Conviction because of the misapplied controlling law; and 71.1 (f) violation;

8. To Relieve Counsel and Vacate sentence and judgment of conviction and pursuant to State v. Hunsberger, 418 S.C. 335, 794 S.E.2d. 368 (2016) holdings quoting Barker v. Wingo, 407 U.S. 51 (1972)

9. To Relieve Counsel Vacate sentence and judgment of conviction in light of incomplete record false and misleading Order of dismissal

To Relieve Counsel, Vacate sentence and judgment of conviction

