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OCT 18 2024

S.C. SUPREME COURT

In the Supreme Court
of South Carolina Supreme Court

Ben Robert Stewart, 223006

v.

The State of South Carolina, Ola A. Johnson, Sarah E. Shipe, Angie Bryant,
Affidavit; Pleading A Special Matter

Appellate Case No 2023-001478

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

AFFIDAVIT; PLEADING A SPECIAL MATTER;

I, Ben Robert Stewart, 223006, hereby certify that the foregoing is true and correct upon belief and knowledge and says that falsity herein is pursuant to penalty for perjury 28 USC § 1746 and says:

STATEMENT OF THE FACTS

Pursuant to 243 SCACR this Honorable Court has jurisdiction and Petitioner presents complaints pursuant to SCRPC Rule 9 (a) and (b) and pleadings presented to advance the concept of judicial economy; to conserve valuable and scarce judicial resources and to prevent further inordinate delay that indeed resulted in injury and appears intentional by tactics unfairability and so clear and obvious that shockingly in the administration of justice that unquestionably denies due process and equal protection of state and federal laws and Constitutions.

RULE 9 (a) averment

Appellate Defender, Sarah E. Shipe, who works at the Division of Appellate Defenders Indigent Defense Division in Columbia South Carolina, 1330 Lady Street, Suite 401, Columbia S.C. 29201-3332, tel, 803-734-1330,

Is the unwanted, oppressive and self-serving attorney who illegally obtained Petitioner as a client, knowingly engaging in a conflict of interest whereas Petitioner raised ineffective assistance of counsel against her co-worker Wanda H. Carter, Esquire, and filed disciplinary complaint against her other co-worker Robert M. Dudek, and filed two disciplinary complaints against Attorney Shipe herself see; Exhibit C-11, stating "Mr. Stewart also asserts a conflict of interest because he raised the issue of ineffective assistance of appellate counsel in post-conviction relief"... "it does appear that Mr. Stewart raised three separate allegations of ineffective assistance of appellate counsel" (end of quote) however Attorney Shipe, failed to raise these three grounds and an addition (34) grounds denying Petitioner his right to access to the Court under the U.S. Const First Amend, provided under S.C. Const Article 1 § 3. also 17-27-20 s.c. code ann, Rule 71.1 SCRPC §(c) (e) and U.S. Const 14th Amendment; see; SCACR Rule 243, and South Carolina Uniform Post Conviction Relief Procedure Act; and Post Conviction Relief Actions, where Petitioner brought and presented and injury indeed occurred irreparable damage exist because

of the intentional tactic by the state deliberate waiting-game with the knowledge of Val Hudson illing health and warned death, such result occurred as an intentional infliction purposely sees Exh B12)

Moreover; the Order of Dismissal reviewed by Attorney Shipe containing gross ethics and unfair practice that demonstrates clear violations of professional conduct and misconduct in office was obviously conceded and known by Attorney Shipe, more telling, her willingness to aid such deprivation is displayed by her disregarding her very own words, see; Exhibit C12) stating "The Supreme Court can only consider the information that was before the PCR court"... end of ~~good~~) is testament of her understanding procedure before this Honorable Court yet, combining an Appendix with (1544) pages but the only material "before the PCR court" was the PCR transcript its self and a BRADY violation note (1) page totaling (106) pages that was suppose to legally be before this Honorable Court.

Petitioner alerted the Supreme Court of South Carolina and the Court was also on notice by Exhibit C-11 letter by Attorney

Robert M. Dudek, Chief Appellate Defender "Mr. Stewart also asserts a conflict of interest because he raised the issue of ineffective assistance of appellate counsel in post-conviction relief," end of quote) and counsel failed to appear at the April 17, 2023 PCL hearing thereby admitting to the allegations of ineffective assistance.

The Order, besides the date type error of 2023 when actual 2024 started "Motion for appointment of counsel other than counsel from the Commission on Indigent Defense ... motion is denied" see Exhibit C13) it completely left out Petitioner's standpoint as to an conflict of interest, however, contained in Exhibit C6 Motion Affidavit And Cause For Appointment of Counsel (Conflict of Interest) January 21, 2024 pgs 83-84 Declaration and Affidavit of Facts for Cause, Petitioner explained that All attorneys included in this case obstructed or disregard Petitioner's rights under the State and Federal Constitution, Attorney Ola A. Johnson and Attorney Sarah Shippe are included. This Honorable Court responded Exhibit C17 pg 136-138 stating because you are represented by counsel, no action will be taken on your pro se filing".

Petitioner, filed Exhibit #25 Affidavit Motion To Relieve Counsel And

Vacate or Remand For Default; Petition For Leave To Make
And File A. Motion 60 (b); Subpoena Duces Tecum; Affidavit;
Motion For Substitution of Parties; Amendment to Brief only
Applicable law.

Petitioner, filed Exhibit #26 Court of Administration, Complainant
Request to Correct Court Filing pursuant to Clerk Duty July 25, 2024
Affidavit; Motion To Retrieve Counsel Pursuant to Forett v. California,
422 U.S. 806 (1975); and Affidavit; Notice; of Cause for
Conflict of Interest; Request for Return; Vacate or Remand, Sep 28,
2024.

The Second Order, D3) dated October 3, 2024 denied Petitioner's
right to proceed pro se in appeal from a post conviction relief see;
Exhibit D3 Order stating; "there is no right to proceed pro se on appeal,
and the Court may, in its discretion, allow a petitioner to proceed pro
se)." citing State v. Roberts, 364 S.C. 583, 588-89, 614 S.E. 2d
626, 629 (2005)

Petitioner presented three questions in Affidavit; Notice of

Cause for Conflict of Interest; Request for Return; Vacate or Remand; and presented twelve questions in Affidavit; Motion To Relieve Counsel Pursuant to *Faretta v. California*, 422 U.S. 806 (1975) both as Exhibit #26., as 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 its 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 States 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 *South Carolina State Highway Dept v. Merdith*, 241 S.C. 306, 128 S.E.2d 656 (1985) 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 7. Remand is required when the State Defaults

pursuant to Rule 55(e) SCRCP, because it based it erroneous order of dismissal pursuant to 28 USC § 2254 (e) (2) it violates due process under State and Federal law, under 17-27-10, et seq; 28 USC § 2254. 8. Is Petitioner's Sixth Amendment to a speedy trial, and Fourteenth Amendment for due process, equal protection violation with irreparable damages? 9. Does the PCR Courts 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? see; Motion To Relieve Counsel pursuant to Farettta v. California, also Whether, Conflict of Interest Exist whereas Petitioner is filing a civil suit against Appellate Counsel stewardship rendering such conflict?; Whether, Petitioner is systemically being hindered, deprived and denied access to the

Courts?; Whether, Due Process compels Vacation and or Remand?

RULE 9 (b) averment

Initially, Petitioner filed several claims under the rubric of a denial of effective assistance of counsel pursuant to Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006) which held that appointed counsel failed to provide an adversarial challenge to the State and thus, prejudice from deficient performance was presumed, the claims included all amended Petitions filed by PCR Attorney who clearly incorporated the underlining authorities stated in his amended petitions which was not ruled on by the PCR Court nonetheless the trial transcript was not submitted into evidence for review to conclude an finding of fact. This lack of adversarial challenge to the prosecution traveled from PCR Attorney to Appellate PCR Attorney Shipe where obvious disregard for the law is clear and when not corrected it means it is condoned; see, State v. Lewis, 434 S.C. 158, 863 S.E.2d 1 (2021) held statute was not void for vagueness citing 8-1-8 S.C. code ann. further, the Lewis Court stated 8-1-80 S.C. code ann provides for the criminal liability of any public officer who is guilty of official misconduct,

habitual negligence, habitual drunkenness, corruption, fraud, or oppression and authorizes the imposition of a fine of up to 1000 and imprisonment of no more than one year, exactly as it did when enacted in 1829. see; United States v. Shaffer Equipment, Co, 11 F.3d 450 (4th Cir/1993) held government attorney's breach duty of candor owed to Court by failing to reveal the EPA's on scene coordinator for cleanup had misrepresented his academic credentials in pending and other cases and that civil and criminal investigations were pending against coordinator.)

Petitioner averment is clear pursuant to Rule 9 (a) however if it is not; please see; Tower v. Glaver, 467 U.S. 914 (1984) whereas 9 (b), actions and inactions under color of state law engaged in a conspiracy with State officials to deprive Ben Robert Stewart III hereafter Petitioner of his federal rights including State and Federal Constitutional RIGHTS!

Petitioner averment is clear because the Attorneys named Ola A. Johnson, and Sarah E. Ship in official and personal capacity ~~are not immune for~~ intentional misconduct is viewed throughout these document Petitioner has been filing with the State Supreme Court containing ill tactics and

sham acts against Petitioner intentionally because I even wrote everyone; Mr. Zachary Jones from the Attorney General's office who drafted the Exhibit #4 Order of Dismissal; The PCR Court The Honorable Eugene C. Griffith Jr.; PCR Attorney Ola A. Johnson; and Appellate PCR Attorney Sarah E. Shipe; see; Exhibits 17, 18, 19 and 20 (quoting and citing the holding and circumstances where no 59(e) Motion was filed and reversal was warranted also; see Fishburn v. State,

"We do not place the Blame on a single party below 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"

The Supreme Court indeed responded in Exhibit C22 stating; "no action will be taken on this pro-se filing" dated April 29, 2024. And no one responded to correct the obvious procedural, substantive due process violations.

Petitioner also submits that both PCR and Appellate Counsel violated Rule 407 SCACR, Rule 3.3 Conduct Toward the

Tribunal. A lawyer shall not knowingly:

- (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
- (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

Legal Argument Section(4): "Legal argument based on

a knowingly false representation of law constitutes dishonesty toward the tribunal.

Attorney Shipe has indeed violated all aforementioned Sections pursuant to Rule 407 SCACR, Rule 3.3. Sections as follows:

Section (1)

(a) she falsely stated and submitted that the Appendix containing () pages was a record in the York County Court of Common Pleas when in fact it was not for purposes for evidence pursuant to Rule 243 28 USC A 2254(e) (2); excluding the actual Post Conviction Relief Hearing on April 17, 2023; including,

1. Pre-Trial Hearing Transcript dated Sep. 17, 2008
2. Pre-Trial Hearing Transcript dated Feb. 11, 2009
3. Trial Transcript dated Feb. 23-27, 2009
4. Application For Post Conviction Relief
5. Return
6. Amended Return
7. Amended Application For Post Conviction Relief
8. Second Amended Application For Post Conviction Relief
9. Indictments
10. Sentencing Sheets

and upon reviewing the index of the Post Conviction Relief transcript

on Exhibit P.1 No. 2. Index to PCR hearing pgs 2-3 displays (STATE'S EXHIBIT NO. 1 (NOTES)) one page, (1), conclusively proves the lack of evidence introduced at the hearing in which she failed to correct before this Honorable Court.

Attorney Shiye has also violated Section (2) of 3.3. Rules of Professional Conduct, (b) a remand is required for such circumstances because the Order of Dismissal was construed by a unlawful record or no record in violation of Section 17-27-80 s.c. code ann (final Judgment) and the actual prejudice and injury of the lost of vital witness Lauanda Val Hudson, pursuant to the Barker v. Wingo standard was not established where the intentional ten year delay informing the state of illing witness and the states improperly and unjust tactics such as attempting to reframe the mandated PCR claims before the Court, with its misplaced Clayton v. State, 278 S.C 655, 658, 301 S.E.2d 133, 134 (1981) by the state arguing that Petitioner lacked standing because "South Carolina has no duty to transport Applicant for a hearing, when indeed Petitioner never requested to be

transferred/transported for the hearing; but for the hearing to be held via video-conferencing; furthermore Petitioner standpoint in *Leamon v. State*, 363 S.C. 423, 611 S.E.2d 494 (2005) because the Applicant Leamon served a sentence in North Carolina and filed a PCR within one year after returning to South Carolina and the South Carolina Supreme Court dismissed Leamon's PCR as untimely. Therefore, the State's position that time is tolled until Applicant returned to South Carolina is/was wrong *Id.*

The above argumentation was cited against the State's Conditional Order to Dismiss, signed by the Honorable J. Derham Cole, (2014) which it indeed stoped this instant PCR matter from unjustly being denied, as another demonstration of unfair practice as to bar Petitioner from the Courts in which undoubtedly the adversary knew the ending result and intentional gain.

Attorney Shipe, as PCR Appellate Counsel in this matter was ~~of~~ aware of the State appellate's argument; which appeared to get this case dismissed yet failed to avail an defense as to a waiver

of such appellate arguments; even Rule 8, SCRCP.

Petitioner further demonstrates that Rule 3.3, Rule of Professional Conduct Section (3) was violated before this Court when Attorney Shippe accepted and disregarded the false facts contained in the Order of Dismissal mentioning the lack of Val Hudson affidavit when Attorney included the very affidavit that's claimed falsely by the State that her testimony was never introduced when the Attorney General's office received the PCR Application; Memo of Law in Support, and Table of A-Exhibits A-1-A-6 filed received Dec. 9, 2013 containing Val Hudson's affidavits Exhibit A-2 and PCR Attorney Ola A. Johnson spoke the words of the late Lawrence Valerie Hudson on the record at the PCR hearing see Exh #22 PCR Transcript at (20), therefore the falsity implied by the State should have been corrected see pg (1) Exhibit #4 Order of Dismissal; Also; the Order of Dismissal also falsely stated that Claims regarding Appellate Counsel was waived see Exhibit #4 Order of Dismissal at (4) however; PCR Counsel indeed

questioned Petitioner on the precise claims confirming the false statements within the order of dismissal see Exh #22 PCR Trans, pg ()

However Appellate Attorney Shipe did not correct these errors; The Petitioner raised a denial of assistance of counsel regarding trial Counsel failure to challenge the Interstate Agreement on Detainers Act see; 18 USCA App 2; 2; also 17-11-10 sc code ann, according to Article VI(b) because Petitioner filed an Emergency Writ of Habeas Corpus in Pre-trial and provided Exhibit B1, Pennsylvania Bureau of Disability Determination, (evaluation) demonstrating Petitioner does not apply to the (IAD) because he is adjudged mentally ill and the Attorney General Office was served certified mail on Feb. 2009) and the office of Attorney General presumably lost those files because the Order of Dismissal at (19) states that Petitioner did not produce ~~and~~ any evidence to prove mentally insane or mental illness regardless Petitioner was indeed on Social Security for mental illness and the petitioner provided these documents

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to the Office of Indigent Division where Attorney Shipe however she failed to include these file but Petitioner included them in direct appeal regarding taken medication and going to trial suffering from the side effects of Prozac see; Exh B19

Ashcroft v. Iqbal, 556 U.S. 662 (2006) standards

These Attorneys as the Post Conviction Relief Attorney, Ola A. Johnson; and Appellate PCR Attorney Sarah E. Shipe violated misconduct, in the Rules of Professional Conduct In terms is pursuant to Tower v. Glaver, 467 U.S. 915 (1984) because Defense attorneys knowingly assist a Judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law against Plaintiff see; Rule 409 SCACR, Rule 8.4(g)

Both Attorney Johnson and Shipe failed to Report Misconduct, in the Rules of Professional Conduct, and knew another lawyer has committed a violation of Rules of professional conduct against Petitioner and indeed aided to secure Petitioner's conviction, Tower v. Glaver, supra.

Both Attorneys Johnson and Shipe intentionally deprived Petitioner of Federal Habeas relief by not properly following norms to enter transcript into evidence and undermined Petitioner.

Attorney Shipe violated professional conduct against Petitioner by not reporting prior attorneys for damaging Petitioner's case.

Attorney Shipe intentionally became a conflict of interest against Petitioner to secure his conviction.

Attorney Shipe violated Petitioner's Sixth Amendment and Equal Protection of the laws intentionally by not following instructions in Exh #12, Exh #14 and Exh #17.

Attorney's Both Johnson and Shipe proves intentional misconduct in Exh #17, Exh #18, Exh #19 and Exh #20 by refusing to correct a mandated filing and knowingly deprive Petitioner of Federal Habeas review see 28 USC 2254 (b) also (e) (2) and Fishburn v. State, Supra.

Attorney Johnson did not notify the courts that ~~that~~ Petitioner was/is a social security dependant on disability for mental illness and was/is excluded being transported pursuant to the IAD, Act, 18 USC App 2:2 Article VI (b).

Attorneys Johnson and Shipe did not cite or correct fraud in regarding the Exh #4 Order of Dismissal, because it violated 71.1 (f) and not transmitted and entered by the Clerk, and it contained conclusive false and misleading facts and it's Order was not based on any record facts because the transcript was not entered into evidence.

Attorneys Johnson and Shipe did not cite or correct that the state could not alter or amend provisions of the IAD, Exh #4 pg. 19) yet the Order unlawfully and incorrectly changed Art VI (b) provisions.

Attorneys Johnson and Shipe did not cite that irreparable damage was caused by the States intentional delay tactic see; Barker v. Wingo when Petitioner lost Val Hudson as a witness upon several warnings to the State see Exh #2 Exh #7 Exh #9 Exh #10 and Exh A2, Exh B12.

Attorney Johnson conspired with trial attorney who conspired with the State Solicitor's office in pretrial emergency writ of Habeas Corpus Exh B2) petition to defraud the proceedings and failed to amend, compared to Exh B) and did not submit Petitioners mental disability status as well to aid the state, knowingly.

Petitioner Exh #24 Affidavit Motion For Default And Cause For Dismissal Rule 55 (e) SCRCP, Rule 55 (a) was unlawfully cancelled and Amended and where extraordinary circumstances exist where Petitioner's default against the State is being blocked, there is default found not only in failing to respond to averment but fraud and intentional damage when notice was asserted of killing witness; See S.C. Const Article V, section 4;5.

Petitioner's Exh #25 Affidavit Motion To Relieve Counsel And Vacate or Remand for Default, because Petitioners 6th

and 14th Amendment /was/ is being denied and deprived to a fast and speedy trial asserted under *Barker v. Wingo*, 407 U.S. 514 (1972)

Petitioner in this instant Pleading Special Matter; there is a request for two additional pleadings:

1. Motion For Seizure of Person or Property, see; Rule 64 SCRPC.
2. Temporary Injunction, see; Rule 65 SCRPC.

These Motions requested are in the interest of justice and are included in this Honorable Court for filing because the Petitioner brought notice to Attorney, Johnson, last name, Ola, first name; and Attorney, Shipe, last name, Sarah, first name; in April of 2024 requesting both Attorneys to correct mandated filings and procedures and they ignored Petitioner and brought disciplinary complaints against both attorneys and Petitioner brought this Honorable Court on notice on Sep 28, 2024 by way of Affidavit; Notice of Cause for Conflict of Interest; Request for Return; Vacate or Remand

September 28, 2024, and expressed that Petitioner indeed is filing an active civil rights suit against Attorney Ola A. Johnson and Attorney Sarah E. Shipe and York County Clerk, Angie Bryant (case No: xxxxxxxxxx) Petitioner sought Article V, § 4:5 review however; did not obtain such ruling.

WHEREFORE; Petitioner prays the Court correct these errors because this is a PCR case; Petitioner has the burden to establish his claims not an attorney; and such attorneys are committing misconduct against Petitioner and violating State and Federal laws and Constitutions. see; *Shinn v. Ramirez* 596 U.S. 366 (2022)

Respectfully Submitting ;)



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

On this 15th of October 2024.

In the Supreme Court of
South Carolina

Ben Robert Stewart, 223006 v. The State of South Carolina


Case No: 2023-001478

Eugene C. Griffith, Jr Judge

PROOF of Service

Ben Robert Stewart, hereby certifies that the foregoing
APPIDAVIT; PLEADING SPECIAL MATTER; is filed to
the South Carolina Supreme Court

On this 15th of October 2024


Ben Robert Stewart 223006
990 Wisaeky Highway
Bishopville S.C 29010