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THE SUPREME COURT OF SOUTH CAROLINA

DEC 09 2024

S.C. SUPREME COURT

Bobby Joe Barton, #163629
APPELLANT,

Vs.

STATE OF SOUTH CAROLINA,
RESPONDENT,

APPELLATE CASE No. 2024-001190

APPELLANT'S REPLY TO SUPREME COURT
RULE 243(c), SCACR EXPLANATION
FOR APPELLATE REVIEW.

THE APPELLANT MOVED ON THE SUPREME COURT AS REQUIRED BY RULE 243(c), SCACR WITH AN EXPLANATION AS TO WHY THE LOWER COURT OF THE THIRTEENTH JUDICIAL CIRCUIT, COURT OF COMMON PLEAS MADE AN ERRONEOUS ERROR DISMISSING HIS APPLICATION FOR A NEW HEARING BASED UPON ONE ISSUE OF "AFTER DISCOVERED EVIDENCE," AND THE EVIDENCE BEING SO EGREGIOUS THAT IT COULD HAVE CHANGED THE OUTCOME OF THE HEARING HAD APPLICANT KNOWN OF IT. IT WOULD ALSO AMOUNT TO A GROSS MISARRANGEMENT OF JUSTICE TO ALLOW THIS DISMISSAL AND DENIAL OF IN PERSON HEARINGS TO STAND AND THE STATE WITNESS NOT TO BE CONFRONTED ON COUNSEL'S PERJURY, FRAUD ON THE COURT, AND ENTERING OF FALSE EVIDENCE BEFORE THE COURT BUT NOT LIMITED TOO ALSO AS FOLLOWS WHY THIS CASE SHOULD BE REMANDED TO THE LOWER COURT FOR FURTHER PROCEEDING ON THIS ISSUE,

THE APPELLANT FURTHER STATE THAT THIS ISSUE IS NOT IMPROPERLY SUCCESSIVE, NOR UNTIMELY FILED AND NEITHER IS IT BARRED

by "res judicata", HOWEVER IT WAS SUMMARILY DISMISSED WITH PREJUDICE THROUGH "ABUSE OF DISCRETION" BY THE LOWER COURT AND NOT SUPPORTED BY THE FACTS OF FINDINGS OF THE CASE NOR OF CONCLUSION OF LAW, "SMALLS V. STATE", (DISTINGUISHED) 422 SC 174, 810 S.E.2d 836 (SC, 2018). APPELLANT WILL STATE THE FACTS ON THE RECORD OF HIS CLAIM AND SHOW THAT THERE IS A GENUINE DISPUTE OF MATERIAL FACT TO ESTABLISH A ARGUABLE ISSUE OF MERITORIOUS FACT WHICH WOULD REVERSE THE LOWER COURT'S DECISION TO DISMISS HIS APPLICATION DUE TO THE FACT THAT IT IS NOT IMPROPER AND THE EVIDENCE WILL DEMONSTRATE BUT NOT LIMITED TO:

FACTS OF THE CASE

AFTER THE APPELLANT HAD TESTIFIED AND DEMONSTRATED BEFORE THE THE COURT THAT TRIAL COUNSEL WAS I.A.D.C. AND HER PERFORMANCE AND REPRESENTATION WAS BOTH DEFICIENT AND THIS DEFICIENCY PREJUDICED THE DEFENDANT. APPELLANT TESTIFIED THAT HAD HE KNOWN OF THE PLEA OFFER, HE WOULD HAVE ACCEPTED THE OFFER AND WOULD NOT HAVE GONE TO TRIAL, "STRICKLAND V. WASHINGTON" 466 U.S. 668 (1984), "GLOVER V. UNITED STATES", 531 U.S. 178, 203, 121 S.Ct. 696 (2001) (THE COURT'S JURISPRUDENCE SUGGESTS THAT ANY AMOUNT OF ACTUAL JAILTIME HAS A SIXTH (6TH) AMENDMENT SIGNIFICANCE.) "LAFLER V. COOPER", 566 U.S. 156 (2012), "MISSOURI V. FRYE", 566 U.S. 134, 132 S.Ct. 1399 (2012) & "DAVIE V. STATE", 381 SC 601 (2009) & "BELL V. STATE", 410 SC 436 (2014),

APPELLANT ASK THE COURT TO TAKE NOTE OF Page #2-THRU-#5 & EXHIBIT-#B" OF P.C.R. TRANSCRIPT HEARING (TR. I, II, 1-THRU-TR. 31, II, -18.) WILL SUBSTANTIATE THE APPELLANT'S TESTIMONY AND HOW HE CARRIED HIS BURDEN OF THE STRICKLAND PRONG "OF HOW COUNSELOR DEFICIENT PERFORMANCE, PREJUDICED HIS CASE, WHICH

CAUSED THE APPELLANT TO GO TO TRIAL AND RECEIVE THE GREATER SENTENCE OF (25) YRS. VS. (15) YRS. WHICH IS ACTUAL PREJUDICE, SATISFYING THE PREJUDICE PRONG REQUIRED BY "STRICKLAND V. WASHINGTON," 466 U.S. 668 (1984), "GLOVER V. UNITED STATES," (THE COURT'S JURISPRUDENCE ~~IN~~ 199 SUGGESTS THAT ANY AMOUNT OF ACTUAL JAIL TIME HAS A SIXTH (6TH) AMENDMENT.)

THE APPELLANT P.C.R. WAS HELD ON FEBRUARY 18, 2016 AND THIS WAS THE ISSUE FILED IN HIS APPLICATION ON SEPTEMBER 12, 2014 AND DURING THE HEARING THE TRIAL JUDGE DANIEL D. HALL, WARNED THE APPLICANT NOT TO STEP OFF THE WITNESS STAND WITHOUT HIS PERMISSION, (P.C.R. TR. 37, II. 24, 24, - THRU ~~38~~ 38, II, - 3) SEE: P.C.R. TRANSCRIPT.

TRIAL COUNSEL'S TESTIMONY ON DIRECT, BY KAREN RATHBAN STATE
THE APPELLANT IN P.C.R. WAS THE FIRST WITNESS TO TESTIFY ON THE STAND AND THE ISSUE FOR WHICH HE IS BRINGING BEFORE THE WAS NOT KNOWN AT THE FILING OF THE P.C.R. APPLICATION AND COULD NOT HAVE BEEN DISCOVERED THROUGH THE EXERCISE OF DUE DILIGENCE ~~EVEN~~ PRIOR TO THE APPLICANT'S TESTIFYING AT THIS HEARING AND WHEN THE PROSECUTION, THE STATE IN THIS CASE PASS UPON THE OPPORTUNITY TO CROSS-EXAMINE THE APPLICANT UPON HIS TESTIMONY AS IN THIS CASE. (SEE: P.C.R. TRANSCRIPT, (TR. 66, II. 16-22.) IT IS WELL RECOGNIZED IN A COURT OF LAW "A UNREBUTTED PRESUMPTION, IS A MATERIAL FACT!" THIS WOULD SHOW A PREPONDERANCE OF EVIDENCE THAT THE TESTORS TESTIMONY IS CREDIBLE!

TRIAL COUNSEL SUSANNAH ROSS BEING A BOARD CERTIFIED ATTORNEY TOOK THE STAND AS A WITNESS FOR THE STATE, MS. ROSS TESTIFIED ON "DIRECT" THAT THE DEFENDANT WHO IS THE APPELLANT IN THIS CASE TESTIFIED 3

THAT: #A) THE APPLICANT REFUSED TO BE TRANSPORTED TO THE COURT HOUSE CONCERNING THE PLEA OFFER DISCUSSION ON MARCH 25, 2010 AND,
#B) HE WAS REFUSING TO TALK TO HER. See: P.G.R. TRANSCRIPT, (TR, 85, II, 17-25, & TR, 87, II, 1-6) DIRECT TESTIMONY FOR THE STATE.

TRIAL COUNSELS TESTIMONY ON CROSS-EXAMINATION
BY DEFENSE COUNSEL CAROLINE M. HURLBECK

7. Q ALL RIGHT. AND YOU MENTIONED THAT MR. BARTON HAD
8. BEEN BONDED CARDED A COUPLE OF TIMES AND THAT MR. BARTON
9. WAS ADAMANT, AND THEN I DID'NT HEAR THE REST OF YOUR
10. SENTENCE, WHAT WAS HE ADAMANT ABOUT?
11. A. HE WAS REFUSING TRANSPORT,
12. Q, OKAY
13. A. SO THEY'RE TRYING TO TAKE HIM TO COURT TO PLEA OR
14. FOR ME TO SAY, "THIS IS THE LAST CHANCE", AND SOMETIMES
15. I DON'T SEE IT IN HIS FILE. SOMETIMES I'LL GET
16. CLIENTS TO SIGN SOMETHING SAYING -- I HAVE DOING THAT TO
17. THEM, AND I DON'T HAVE ANYTHING IN THE FILE THAT I DID THAT
18. THAT,
19. Q OKAY
20. A BUT HE WOULD -- HE REFUSED TRANSPORT. HE WOULDN'T
21. COME

P.G.R. TRANSCRIPT. TR. 102, II, 7-21 (ATTACHED)

TRIAL COUNSEL TESTIMONY ON CROSS-EXAMINATION

BY DEFENSE COUNSEL CAROLINE M. HORLBECK

18. Ms. HORLBECK: ALL RIGHT, BEG THE COURT'S
19. INDULGENCE,
20. ♀ BY MS. HORLBECK
21. ♀ LET ME THINK ABOUT HOW I CAN PHRASE THIS, AND YOU
22. MAY HAVE ANSWERED THIS ALREADY. YOU-- DID YOU-- WERE
23. THERE ANY-- ANYTHING FROM THE JAIL, ANYTHING IN WRITING
24. STATING THAT MR. BARTON REFUSED TO BE TRANSPORTED TO
25. COURT OR DID-- HOW DID YOU OBTAIN THAT INFORMATION THAT

P.C.R. TRANSCRIPT, TR. 103, II. 18-25 (TRANSCRIPT PORTION--
- ATTACHED)

TRIAL COUNSEL SUSANNAH ROSS ON CROSS-EXAMINATION

BY DEFENSE COUNSEL CAROLINE M. HORLBECK

1. MR. BARTON REFUSED TRANSPORT?
2. A I DON'T KNOW. I WOULD THINK THAT WHEN I'M ASKING
3. SOMEBODY UP HERE, YOU KNOW, WHERE IS HE OR ASKING ALLISON
4. WHERE IS HE, WHY DIDN'T HE GET HERE, SOMEONE, ONE OF THE
5. DEPUTIES, SOMEONE TOLD ME HE'D REFUSED TRANSPORT. I
6. WOULDN'T HAVE JUST MADE IT UP, AND IT'S KIND OF LOCKED
7. IN, YOU KNOW, KIND OF THE MIDDLE OF THESE NOTES,
8. ♀ OKAY. WAS THERE ANYTHING IN WRITING?
9. A. Hu-uh?

10. Q OKAY, DO YOU HAVE ANYTHING WITH MR. BARTON'S NAME
11. ON IT SHOWING THAT HE REFUSED THE PLEA OFFER, TO ACCEPT
12. THE STATE'S PLEA OFFER?

13. A NO,

14. MS. HORLBECK: THANK YOU, THAT'S ALL I HAVE.

15. MS. RATIGAN: THAT'S ALL I HAVE, YOUR HONOR. AND

16. THE STATE WOULD REST.

21. THE COURT: ALL RIGHT, WE'LL TAKE THIS UNDER

22. ADVISEMENT. AND THAT WILL CONCLUDE THE HEARING FOR

23. TODAY. THANK YOU.

P.C.R. TRANSCRIPT, TR. 104, II. 1-23 & PAGE (COVER)
PAGE & CERTIFICATE OF REPORTER (COPY ATTACHED)

APPELLANT STATE THAT THIS EVIDENCE OF FALSE TESTIMONY, BY WAY OF PERJURY EQUATES TO "FRAUD ON THE COURT." THIS EVIDENCE WAS PRESENTED BY AN BAR CERTIFIED ATTORNEY WHOM ARE HELD TO AN HIGHER STANDARDS THAN EVERY DAY CITIZENS, THIS PERJURED TESTIMONY WOULD HAVE CHANGED THE OUTCOME OF THAT SINGLE ISSUE HAD COUNSEL NOT COMMITTED THIS FRAUD ON THE COURT. "ALDANA V. DELMONTE FRESH PRODUCE N.A., INC.", 741 F.3d 1349, 1359 (11th Cir. 2014) WHERE AS IN THIS CASE HE SUBSTANTIATED IN THE REPLY BRIEF IN WHOLE WHERE AN OFFICER OF THE COURT HAS COMMITTED "FRAUD ON THE COURT" IT AMOUNTS TO A GRAVE MISCARRIAGE OF JUSTICE

AND EVEN WORSE TO ALLOW IT TO STAND IS A GREATER MISARRIAGE OF JUSTICE TO LET PERJURED TESTIMONY OF ONE OF THE COURTS OWN TO GO UNCHECKED AT THE SAKE OF PUNISHING A PRISONER EVEN FARTHER THAN THE CONSTITUTION PERMITS. "FOX V. ELKRUN COAL CO." 739 F.3d 131, 135-136 (4th Cir. 2014) & "TURNER V. PLEASANT," 663 F.3d 770, 777-78 (5th Cir. 2011)

APPELLANT HAS ALLEGED IN HIS APPLICATION, FACTS THAT WOULD ESTABLISH AN EXCEPTION TO EITHER THE STATUTE OF LIMITATIONS OR PROHIBITIONS AGAINST P.C.R. APPLICATIONS, AND THOSE FACTS ARE NOT CONCLUSIVELY REFUTED BY THE RECORD BEFORE THE COURT, A QUESTION OF FACT IS RAISED WHICH CAN ONLY BE RESOLVED BY A HEARING. S.C. CODE ANN. §§ 17-27-45(A) 17-27-70(b), & 17-29-90. "ROBERTSON V. STATE," 418 SC 505, 516, 795 S.E.2d 29, 35 (2016, SC)

IT IS CLEARLY STATED IN THE RECORD OF THE REPLY THAT THE ISSUE OF FRAUD UPON THE COURT "THAT COULD NOT HAVE BEEN KNOWN THROUGH REASONABLENESS OF DUE DILIGENCE BECAUSE THE TESTIMONY BEING FRAUDULENT AFFECTED THE OUTCOME OF THE ISSUE OF I.A.O.C. BY FAILURE TO CONVEY THE PLEA OFFER, THIS EVIDENCE WAS AFTER DISCOVERED THROUGH A EXTENSIVE INVESTIGATION OF THE GREENVILLE COUNTY DEPT. OF PUBLIC SAFETY RECORDS COULD AND DID CERTIFY CERTIFY DOCUMENTS THAT THERE WERE NO TRANSPORTATION ORDERS ON MARCH 25, 2010 FOR BOBBY JOE BARTON TO THE GREENVILLE COUNTY COURTHOUSE!" AFTER MANY MONTHS OF INQUIRING TO CUSTODIAN OF THE RECORDS CAPTAIN JINNY MORAN, SHE RESPONDED WITH PIECEMEAL DOCUMENTS. See; EXHIBIT-#17, OF REPLY AND PAGE 14. WHICH SHE STATES, "YOU CAN SEE FROM THAT LETTER THAT YOU WERE NOT ON THE LIST FOR TRANSPORT FOR THE DATE OF 3/25/2010." See; EXHIBIT-#5(a), (b), (c). INCLUDED REPLY, PAGE 7 & 8.

7.

EXHIBIT-#D OF EXHIBIT-#5, DOCUMENT WAS ENTERED AS EVIDENCE FROM THE 13TH CIRCUIT SOLICITORS OFFICE. WHICH DEMONSTRATED THERE WERE (3) TRANSPORT DATES FOR PLEAS COURT HOWEVER IT ALSO STATE "THERE ARE NO OTHER ORDERS TO TRANSPORT" ASSOCIATED WITH ANY OTHER DATES, AUTHENTICATED BY "KETIE TUCKER," CP, ASSISTANCE TO THE SOLICITOR. See; REPLY PAGE #8, EXHIBIT-#5".

APPELLANT STATE ON "FINAL ORDER OF DISMISSAL," PAGE 2, LINE 5(b)-7(a) WHERE THE COURT STATE THAT THE APPLICANT ALLEGES THROUGH OUT HIS REPLY THAT TRIAL COUNSEL WAS UNTRUTHFUL IN CERTAIN RESPONSES IN THE P.C.R. HEARING.

APPELLANT STATE THAT THE P.C.R. HEARING TRANSCRIPT SHOW ON THE RECORD THAT SUSSANNAH ROSS SWORE UNDER OATH THAT SHE WOULD TELL THE TRUTH. See, P.C.R. TRANSCRIPT, TR. 85, II, 17-25, TR. 87, II, 1-6 ON DIRECT AND CROSS, P.C.R. TR. 102, II, 7-21, TR. 103, II, 18-THRU-TR. 104, II, 1-13. AS ALLEGED IN THE REPLY, See; PAGE 3, EXHIBIT-#B, TRIAL COUNSEL TESTIFIED THAT "SOMEONE, ONE OF THE DUPLICIES, SOMEONE TOLD ME HE'D REFUSED TRANSPORT," AND STATED, "I WOULD'NT HAVE MADE IT UP," AND IT'S KIND OF LOCKED IN, YOU KNOW, KIND OF IN THE MIDDLE OF THESE NOTES!" See P.C.R. TR. 104, II, 4-7. (PLEASE TAKE NOTE OF PAGE #5 & #6 OF THIS BRIEF AND PAGE #4-THRU-#8 OF APPELLANT REPLY BRIEF)

APPELLANT STATE THAT IN HIS REPLY THAT HE DID INITIATE AN FORMAL INVESTIGATION CONCERN THESE DOCUMENTS WHICH WILL DISPROVE TRIAL COUNSEL'S/RESPONDENT'S DEFENSE STATEMENT IN "THE FINAL ORDER OF DISMISSAL" ON PAGE 2, SECOND PARAGRAPH, LINE 3(b) & 4. APPELLANT STATE THAT HE DID FILE A MOTION TO SUPPLEMENT THE RECORD IN NOVEMBER, 2016. HOWEVER THE P.C.R. JUDGE DANIEL DEWIT HALL DENIED TO ENTERTAIN IT. See, PAGE #7 & #10 OF REPLY

APPELLANT INCORPORATES ALL EXHIBITS, AFFIDAVITS, P.C.R. TRANSCRIPTS, OBJECTIONS ON THE RECORD, MOTIONS REQUESTING 59(c) & 52(a), SC RCP, AND THE INITIAL APPLICATION AND THE PETITIONERS REPLY TO RESPONDENT MOTION TO DISMISS WITH OBJECTION PLACED ON THE RECORD TO BE REVIEWED AS A WHOLE BY THE S.C. APPELLATE COURT RULE 243(c), SCA CR.

APPELLANT ARGUES THAT THE LOWER COURT OF COMMON PLEAS ABUSE OF DISCRETION:

#1.) DENYING PETITIONERS P.C.R. APPLICATION ON 20, JUNE, 2024 AND STATING THAT IT WAS IMPROPERLY SUCCESSIVE, UNTIMELY, AND BARRED BY RES JUDICATA.

"QUESTION"

#1.) DID THE LOWER COURT ABUSE ITS DISCRETION WHEN IT DISMISS PETITIONERS P.C.R. APPLICATION DECLARING IT TO BE IMPROPERLY SUCCESSIVE, UNTIMELY, AND BARRED BY RES JUDICATA?

APPELLANT ALLEGES THAT THIS COURT PROPOSED ORDER WAS ADDRESSED IN HIS REPLY BRIEF TO THE COURT AND CITES "WASHINGTON V. STATE" 324 SC 232, 478 S.E.2d, 833 (SC, 1996) (THE SUPREME CT. HELD, THAT) EVEN THOUGH THE POST CONVICTION RELIEF APPLICATION MAY HAVE BEEN SUCCESSIVE, GIVEN MANY PROCEDURAL IRREGULARITIES THAT OCCURRED DURING COURSE OF PETITIONERS JUDICIAL PROCESS THAT DEPRIVED HIM OF DUE PROCESS, "ROBERTSON V. STATE," 418 SC 505, 795 S.E.2d 29, (SC, 2016) See; COURTS' HOLDINGS:

SC SUPREME COURT HELD THAT: ALLEGATION THAT DEFENDANT'S PRIOR P.C.R. COUNSEL WAS NOT STATUTORILY QUALIFIED UNDER THE SC EFFECTIVE DEATH PENALTY ACT, FOR REPRESENTATION OF A DEATH SENTENCED INMATE WAS SUFFICIENT TO PERMIT A SUCCESSIVE P.C.R. APPLICATION, ALSO "ROBERTSON," *id.* (WHERE A DEFENDANT ALLEGE IN A SUCCESSIVE P.C.R. APPLICATION, FACTS THAT WOULD ESTABLISH AN "EXCEPTION" TO EITHER THE STATUTE OF LIMITATION OR THE PROHIBITION AGAINST SUCCESSIVE P.C.R. APPLICATION AND THOSE FACTS NOT CONCLUSIVELY REFUTED BY THE RECORD BEFORE THE COURT, A QUESTION OF FACT IS RAISED WHICH CAN ONLY BE RESOLVED BY A HEARING SUCH AS "WHETHER THE PERJURY COMMITTED BY THE ONE AND ONLY STATE WITNESS AFFECTED THE OUTCOME OF THE HEARING AND PREJUDICED THE DEFENDANT?")

THE AFTER DISCOVERED EVIDENCE COULD NOT HAVE BEEN DISCOVERED THROUGH DUE DILIGENCE AND SC CODE ANN. § 1976. § 17-27-90 (ERRONEOUS CITE § 17-27-90) SHOULD BE § 17-27-90 ALSO § 17-27-45(c) APPLIES TO P.C.R. HEARINGS AS WELL AS TRIALS, WHERE THE RESPONDENT ABOLISHES P.C.R. HEARINGS AND VOIDS THEM, § 17-27-70(b) HOLDS THAT "DISPOSITION OF PLEADINGS AND RECORD IS NOT PROPER IF THERE EXISTS A MATERIAL ISSUE OF FACT."

"QUESTION"

#2) DID THE LOWER COURT ABUSE ITS DISCRETION, ERROR OF LAW WHEN IT DENIED A TIMELY MANNER AS REQUIRED BY CODE 1976 § 17-27-80 WHICH REQUIRES THE P.C.R. CT. MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW. "RULE 59(e)"

APPELLANT STATE THAT THE LOWER COURT DID COMMIT AN

ERROR OF LAW WHEN IT DENIED PETITIONER 59(e) MOTION FILED WITHIN (10) DAYS OF THE LOWER COURT SIGNING OF THE ORDER TO DISMISS, REQUESTING THAT THE COURT TO MAKE SPECIFICALLY FINDINGS OF FACT, SUPPORTED BY CONCLUSIONS OF LAW, "MARLAR V. STATE" 653 S.E.2d 266, 267 (SC, 2007) AND TO PRESERVE THE RECORD FOR APPELLATE REVIEW. See; "PRUITT V. STATE," 423 S.E. 2d, 127, 128 (SC 1991) "FAILURE TO ADDRESS 59(e) MOTION"; AND "McCRARY V. STATE" 408 S.E.2d 241, 305 SC 329 (SC, 1991) "REVERSING ORDER DENYING APPLICANT RELIEF AND REMANDING FOR NEW P.C.R. HEARING WHERE P.C.R. COURT'S ORDER FAILED TO MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW SUFFICIENT FOR APPELLATE REVIEW, IN "FORTUNE V. STATE," 2016 WL-817110 CITIES SC CODE ANN § 1776. § 17-27-80, MANDATES THIS ORDER (§ 17-27-80 (2014))

#3.) Did the P.C.R. JUDGE (COURT) VIOLATE THE PETITIONERS' RIGHT TO HEAR THE MOTION TO SUPPLEMENT THE RECORD WHICH WAS FILED IN THE LOWER COURT IN NOVEMBER 30, 2016?

PURSUANT TO SC R A C T, RULE 212 SUPPLEMENTAL RECORD AND ITS SUBSECTION A PETITIONER MAY AMEND OR SUPPLEMENT THE RECORD AT ANY TIME BEFORE OR POST HEARING. THE APPELLANT DID SO FILE TO SUPPLEMENT THE RECORD WITH EVIDENCE TO CONFORM TO THE EVIDENCE OF THE CASE WITH "AFTER DISCOVERED EVIDENCE" WHICH WOULD HAVE CHANGED THE OUTCOME OF THE HEARING HAD IT HAD PROOF THAT THE PROSECUTIONS, STATE ONLY WITNESS COMMITTED PERJURY, AND "FRAUD UPON THE COURT," SEE; APPELLANT'S REPLY BRIEF, PAGE 8, SIXTH PARAGRAPH THRU-

PAGE 11, FIRST PARAGRAPH AND EXHIBITS # 3, #5, #6, #7, #8, AND #9, WHICH WAS ENTERED AS EVIDENCE HOWEVER THE P.C.R. HEARING JUDGE REFUSED TO ENTERTAIN IT AS THE RECORD IN THE REPLY WILL SUBSTANTIATE. See "LOVE V. STATE" 428 S.C. 231, 834 S.E.2d. 196 (S.C., 2019) (THE S. Ct. HOLDING, HELD THAT DENIAL OF MOTION TO AMEND APPLICATION FOR P.C.R. RELIEF WAS AN ABUSE OF DISCRETION.) "BARNES V. STATE,"

"QUESTION"

#4.) DID THE P.C.R. JUDGE ERROR RULING ON THIS CASE BASED UPON PROCEDURAL GROUNDS RATHER THAN EXTRAORDINARY CIRCUMSTANCES?

APPELLANT STATE THERE ARE EXTRAORDINARY CIRCUMSTANCES IN WHICH THE RESPONDENT IMPEDED THE DEFENDANT FROM GETTING INFORMATION AND MADE IT IMPOSSIBLE TO FILE A P.C.R. IN A TIMELY MANNER, THE RESPONDENT KNEW OF THE PERJURY GIVEN BY THE WITNESS AND THAT TESTIMONY WAS GIVEN AS A MATERIAL FACT AND IT WENT TO THE HEART OF THE MATTER AND THE JUDGE RULED THAT IT WAS CREDIBLE TESTIMONY..

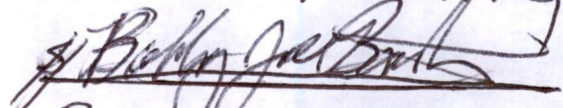
See: THE REPLY AND EXHIBITS AND ALL DOCUMENTS WHICH WILL SHOW A TIME LINE.

See: "MARTINEZ V. RYAN" 566 U.S. 1, 132 S.Ct. 1309 (S.Ct., U.S., 2012) id. @ 1320 (THE SUPREME COURT HAS HELD IN RARE CIRCUMSTANCES, "WHEN THE JUDICIAL SYSTEM WAS SIMPLY

FAILED A DEFENDANT SUCH AS THAT CONSTITUTES A DENIAL OF FUNDAMENTAL FAIRNESS SHOCKING TO THE UNIVERSAL SENSE OF JUSTICE AND WHERE TO CONTINUE THE DEFENDANT IMPRISONMENT WITHOUT REVIEW WOULD AMOUNT TO A GROSS MISCARRIAGE OF JUSTICE, A P.C.R. APPLICANT MAY BE ENTITLED TO FILE A SUCCESSIVE P.C.R. APPLICATION, "ACIE V. STATE," 305 SC 448, 451, 409 S.E.2d. 392, 394 (1991), "CASE V. STATE," 277 SC 474, 289 S.E.2d. 413 (1982) (UNIQUE COMBINATIONS OF FACTS WARRANTED ALLOWING SUCCESSIVE APPLICATION" IN REGARDS TO REASONABLE PROBABILITY,

THE APPELLANT STATE THAT THE P.C.R. COURT HAS ABUSED ITS DISCRETION AND OR ERRORED IN ITS DECISION DISMISSING HIS APPLICATION FOR SUCCESSIVE P.C.R. DUE TO THE FACT THAT IT'S NOT CONCLUSIVELY REFUTED BY THE RECORD BEFORE THE COURT AND IT COULD NOT BE KNOWN OF BY DUE DILIGENCE AND THE COURT DECISION IS BASED ON AN UNREASONABLE DETERMINATION OF FACTS IN LIGHT OF THE EVIDENCE PRESENTED BEFORE LOWER COURT

THEREFORE FOR THESE REASONS THE COURT SHOULD GRANT THE CERTIFICATION OF THIS CASE CONCERNING, "ONE ISSUE" AND ALLOW FARTHER PROCEEDINGS AND FULL BRIEFING,

RESPECTFULLY SUBMITTED

BOBBY JOE BARTON, #163629

cc. Bobby Joe Barton, APPELLANT

13.

Heather Karen famer
EXP. 5.21.34

