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S.C. SUPREME COURT

Part -B,

THE STATE OF SOUTH CAROLINA
[redacted] Court of Appeals

Tarone D. Johnson,
Petitioner,

Vs.

The State of S.C.
Danielle Dixon
Respond,

Case No. 2024-001650

PETITION [redacted]
P.C.R. - 2019-CP-10-2870

Reformatted,

The Petitioner files this [redacted] highlighting why this court should issue this [redacted] because the Petitioner does meet the extraordinary relief for this court to grant this [redacted][1] The Petitioner does not have an alternative court to seek relief in compelling the Charleston County Court of Common Pleas to hear the Petitioner's second PCR as to challenging the PCR procedures as unconstitutional on it face and/or as applied to the Petitioner. [2]

The Petitioner is requesting this Court [redacted] to compel the above captioned Respondent to follow various provisions of the uniform Post-conviction Act such as South Carolina Code §§§17-27-45 (C), 17-27-70, and 17-27-80, along with Rule 12(A) of the South Carolina Rules of Civil Procedures, and South Carolina Clerk of Court manual 6.2.3. Theses statutes and Rules of the Court is ministerial in nature and provide the Petitioner a Specific right to be heard on his PCR in a timely fashion.

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[1] The United States Supreme Court has stated that the Government officials persistent disregard for court rules and procedures and/or when the judge determination of the law is clear error of law. Other Court have found the writ of mandamus appropriate in the following circumstances.

1. To compel the lower court to rule on a motion, such as a post-conviction motion, that was filed a long time ago and no action was taken
2. To compel a lower court to decide a case that was dismissed for lack of jurisdiction in error
3. To compel the release of records after a public records request was made
4. To compel a court-appointed lawyer or public defender to provide information to Petitioner.
5. To compel the Department of Corrections to award the Petitioner credit for time served

[2] Due process questions is a question of fact and is entitled to an evidentiary hearing in the PCR court. Moreover, there are exceptions to overcoming Res judicata and the collateral estoppel doctrine from the Petitioner first PCR petition.

1. Due process concerns where the Petitioner did not receive a fair hearing;
2. If the Court lacks subject matter jurisdiction of issue in its Court.

The Petitioner base this [redacted] on the following facts and grounds:

PROCEDURAL BACKGROUND FACTS 1

NEWLY DISCOVERED EVIDENCE PURSUANT TO S.C. CODE SUBSECTION §17-27-45 (C)

On May 14, 2019, the Petitioner had filed in the Charleston County Clerk of Court's office a PCR on the grounds newly discovered evidence pursuant to South Carolina Code of Laws, §17-27-45 (C), in which gives the Petitioner the statutory right to raise newly discovered evidence after one year of its discovery. §17-27-45 (C) reads in full the following:

> "If the applicant contends that there is evidence of material facts not previously presented and heard that required vacation to the conviction or sentence the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence"

Id.

Within one year of §17-27-45 (C), the Petitioner had timely filed his PCR along with newly discovered evidence by way of affidavits from premier investigative associates that the Petitioner was actually innocent of the crimes the Respondent, the State of South Carolina, had accused the Petitioner of. There was no way the Petitioner could had discovered the testimony from the Petitioner's alleged co-defendant, who was acquitted at his trial of the alleged murder the Petitioner was convicted of. Also, there was no way without the Petitioner's attorney files he could show prosecutorial misconduct in the solicitor using perjured testimony at the Petitioner's trial as to the coins in the record. Trial counsel deliberately prevented the Petitioner to receive before trial, and on both direct and collateral review, his attorney client files.

The Respondent, Clerk of Court, pursuant to South Carolina Code of Law, §17-27-45 (a), did not promptly bring to the Court's attention the Petitioner's PCR petition. The Petitioner's PCR petition on both due process and newly discovered evidence grounds were pending for two (2) years and some months without the PCR petition being properly processed pursuant to South Carolina Clerk manual 6-2-3.

Furthermore, the Respondent, State of South Carolina, did not file a timely return within ninety (90) days after the Petitioner had filed the PCR petition on both due process and newly discovered evidence grounds.

Lastly, the Respondent, PCR judge, in the 2019-2021 terms of Court in Charleston Common Pleas did not fix any time for the Respondent, State of South Carolina, to exceed the 90 days statutory rule in order to respond to the Petitioner's PCR petition. Nor had the Respondent judge granted the Respondent, State of South Carolina, an extension of time to exceed the statutory 90 day rule to timely file a Return.

FIRST [redacted] IN THIS COURT FACTS

On August 1, 2021, the Petitioner filed a writ of mandamus in this Court. The Petitioner stated to the court as he stated in the lower Court that the Petitioner's Co-defendant wrote a affidavit stating that the Petitioner did not have anything to do with the crime of murder. The Petitioner also raised his due process argument in the writ of mandamus as shown in details below.

On November 22, this Court denied the Petitioner's writ of mandamus on the ground of Rule 245, SCACR, and Key v Currie, 406 S.E.2d 356 (1991).

Although this Court denied the Petitioner's writ of mandamus, on December 1 2021, this court issued an opinion in a case, Butler v State 866 SE.2d 347 (2021), where this Court stated that:

> " Defendant was not entitled to vacatur of his murder conviction which was obtained under the " hand of one is the hand of all" theory of accomplish liability, despite the fact that Defendant's accomplices, one of whom was the shooter, were acquitted, in a separate trial, of the murder charges related to the same events; State proved beyond reasonable doubt that the Defendant joined with accomplices to rob victim for whom Defendant and accomplices supposedly were going to purchase marijuana, and one of the accomplices murdered victim in the course of the robbery."

I'd.

Although the facts of that case is distinguishable to the facts of the Petitioner's case, the Petitioner contends there is a significant difference in the Butler v State supra case that should mandate the Petitioner an evidentiary hearing under PCR statute, SC CODE 27-27-45 (C). For one, the Petitioner have a sworn affidavit by the Petitioner's Co-Defendant stating the Petitioner had absolutely nothing to do with the alleged murder of the victim. Only an evidentiary hearing can determine or highlight the Petitioner's testimony as to why the Petitioner's Co- Defendant all these years came forward to help the Petitioner to be released from the charges of murder.

DUE PROCESS ARGUMENT

The Petitioner did not have the full and fair hearing on the Petitioner's first PCR petition to this court. The Petitioner base the due process section on the following facts:

PROCEDURAL BACKGROUND FACTS- PART 2

Before trial, the Petitioner's trial Counsel did not put in a motion under the Fourth Amendment that (1) the police did not have reasonable suspicion to seize the Petitioner at the alleged crime scene, (2) even if the police did have reasonable suspicion to seize the Petitioner for an investigative detention, they did not have probable cause to take the Petitioner from the alleged crime scene to the police station to be questioned for murder, and (3) the Petitioner was not read his Miranda Rights at the alleged crime scene before being taken to the police station.

Furthermore, during the Petitioner's trial, the Charleston County Solicitor had placed in the record knowing perjured testimony/evidence regarding pennies that was allegedly found at the crime scene. The Police report shows that neither the Petitioner nor his alleged co-defendant had any pennies in their possession when the police did an inventory of their property when they were arrested. The Charleston County Solicitor was trying to insinuate that 1) a bag of pennies that was accidently given to the Petitioner by the police department when he was set free was his, 2) and those pennies was inside of his pocket during the alleged crime where at least 23 pennies has allegedly fell out of the Petitioner's pocket. The Petitioner's trial counsel did not object to the Charleston County Solicitor's prosecutorial misconduct during trial, and as a matter of fact, the Petitioner's trial counsel had made the pennies situation worst by questioning the Petitioner of non- evidence in the record that the Petitioner had possession of pennies at the crime scene. The Petitioner's trial counsel was insinuating the Petitioner's guilt regarding the coins that the Charleston County Solicitor knowingly placed false testimony in the record.

Furthermore, the Petitioner's trial Counsel did not properly object to the Trial Judge sending a hung jury back twice in contrary to South Carolina Code of Law, §14-7-1330, in which states:

> "When a jury, after due and thorough deliberation upon any cause, returns into Court without having agreed upon a verdict, the Court may state anew the evidence or any part of it and explain to it anew the law applicable to the case and may send it out for further deliberation. But if it returns a second time without having agreed upon a verdict, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of the law."

The second time the jury was deadlocked. Trial counsel did not object that the jury did not consent nor ask for further explanation in the law, and as a result of that the trial judge erred contrary to South Carolina Code of Law, § 14-7-1330.

Petitioner was found guilty of malice murder and sentenced to life in prison.

Within 10 days to file an appeal, the Petitioner timely appealed to the South Carolina Court of Appeals.

The Petitioner was first appointed Appellate Counsel, Aileen P. Clare, from the South Carolina Indigent Defense. On May 7, 2001, Indigent Appellate Counsel had filed a final brief in the Court. The Appellate Counsel had raised on appeal the following appellate issues:

1) Did the Trial Judge err by denying appellant's motion to suppress a statement made under physical and psychological duress amounting to coercion?
2) Did the Trial Judge err by denying Appellant's motion for a directed verdict?

Because the Petitioner was not satisfied of the appellate issues that Indigent Appellate Counsel was raising on direct review, on November 20, 2001, the Petitioner has retained Attorney Douglas N. Truslow, for both his direct and collateral review process. Attorney Truslow's letter to the Petitioner states in full:

> "Dear Mr. Johnson,
>
> Your father has retained me to assist relative to your appeal and/or PCR. Please sign the enclosed authorization for me to obtain your file from Mr. Shaw and return it in the envelope provided. I will come see you as soon as I get Mr. Shaw's file."

On November 28, 2001, Attorney Truslow had written the Petitioner's Trial Counsel, Harry O. Shaw III, the following letter:

> "Dear Mr. Shaw",
>
> Per Mr. Truslow's letter dated November 20, 2001, enclosed is the authorization from Mr. Johnson requesting that his file be copied and sent to our office. If you have any questions, please feel free to contact me."

Since the date Attorney Truslow was retained as both the Petitioner's Appellate Counsel and Post-Conviction Relief (PCR) Counsel, the Petitioner paid counsel could not obtain the attorney's files from trial Counsel.

Also on direct review, the Petitioner's paid Appellate Counsel had abandoned the Petitioner in filing an appellate brief, because upon information and belief, paid Appellate Counsel could not obtain the attorney files from trial counsel.[3]

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[3] The Petitioner is usually bound by counsel's actions since counsel acts as the Petitioner's agent. See Maples v. Thomas, 565 U.S. 266, 281, 132 S.Ct. 912, 181 L.Ed.2d 807 (2012). However, a "markedly different situation is presented ... when an attorney abandons his client." Id. At 281, 132 S.Ct. 912. In such a situation, as the Petitioner contends that, "an attorney no longer acts ... as the client's representative... [and] [h]is acts therefore cannot fairly be attributed to the client." Id.

Also on Direct Review, the Petitioner has a right to choose counsel to do his appeal, because he paid for Attorney Truslow to be appointed to his appeal. Instead of Indigent Appellate Counsel withdrawing off of the Petitioner's direct appeal, Indigent Counsel continued to represent the Petitioner on direct appeal without the Petitioner's permission.

On September 17, 2002, the Court of Appeals denied the Petitioner's direct appeal. A timely appeal was made to the South Carolina Supreme Court. On February 6, 2003, the Supreme Court denied the Petitioner's Writ of Certiorari.

The Petitioner reasonably thought that paid Attorney had filed his first PCR petition timely within one year of his direct appeal. On May 27, 2003, the Petitioner's paid counsel mailed the Petitioner a letter that states in full:

> "Dear Mr. Johnson"
>
> In order to review your case further, I need to obtain a copy of your file. I would appreciate it if you would sign the enclosed authorization and send it back to me in the envelope provided. I will then attempt to obtain your file from your trial attorney, Mr. Shaw. Please note that I have talked to him-but I still do not have his file, despite the fact that I have made many requests for it."

Upon information and belief, direct/collateral review Attorney Truslow had filed the Petitioner's first PCR petition.[4] Upon information and belief, the Charleston County Clerk's Office did not docket the Petitioner's first PCR petition pursuant to South Carolina Clerk's manual 6-2-3. The Petitioner did not find out that his first PCR petition was not docketed /filed in the Charleston County Clerk of Court until May of 2007. In May of 2007, the Petitioner had

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[4] In Miller v. State, 659 SE 2d 492 (2008) this Court defined the clerk of court duties in filing writs in the lower court:

"We take this opportunity to emphasize the Clerk of Court's duties regarding the filing of a petition for habeas corpus. The Clerk of Court has the ministerial duty to verify the petition contains a case caption, a proper county designation, and the signature of the filing party, and to forward a copy of the petition to the Attorney General's office. S.C. Clerk of Court Manual § 6.24. The Clerk of Court's duty is not discretionary. The Clerk of Court should not construe a petition for a writ of habeas corpus as a PCR application. In addition, although a habeas corpus petition may be flawed on a number of procedural and substantive grounds, it is not within the Clerk of Court's authority to refuse to perform her duty based on her opinion that a filing lacks legal merit or is untimely. 21 C.J.S. Courts § 338 (2006) ("[A] clerk of court cannot ordinarily determine questions of law [or] render judgments.")".See Mose v. State, 420 S.C. 500, 507, 803 S.E.2d 718, 721 (2017) (holding "the [PCR] application is deemed 'filed' when it Is delivered to and received by the Clerk of Court" (citing Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001))). The clerk of court's ministerial duties required the clerk to accept the application for filing, give it the appropriate docket number, and distribute it as required by law. See S.C. Code Ann. § 17-27-40 (2014) ("The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the solicitor of the circuit in which the applicant was convicted and a copy to the Attorney General.").

filed a PCR petition explaining to the Court that his PCR was supposed to be filed by direct/collateral review Attorney Truslow. On September 12, 2007, the South Carolina Attorney General's Office had requested a PCR attorney be appointed to the Petitioner. On October 23, 2007, the Petitioner's PCR Counsel, E. Courtney Gruber (hereafter PCR Counsel Gruber), filed an amended PCR application to the Court.

FACTS

INADEQUATE FIRST PCR THAT VIOLATES DUE PROCESS OF LAW

Without speaking to first PCR Counsel Truslow, PCR Counsel Gruber on October 18, 2007, had filed an amended complaint. PCR Counsel Gruber stated in the amended petition on paragraph 2 that she did "a preliminary review of the pleadings reflected that the Plaintiff had prepared his own brief in support of this Post Conviction Relief application...and that page 12 of the Plaintiff's Post-Conviction Relief application that at some point he had retained an attorney to prefect and file a Post-Conviction Relief application for him, **and that the attorney apparently failed to do so in a timely manner...and that the undersigned has not yet been able to obtain a copy of the record..."**[5]

On January 30, 2008, in the Respondent return and motion to dismiss, it argued that the Petitioner's PCR petition should be summarily dismissed on the grounds that the Petitioner exceeded South Carolina Code of Law, subsection 17-27-45(a) statutory one year time frame and that there is no such thing as first time PCR Counsel's ineffectiveness of counsel.

On February 11, 2008, PCR Counsel Gruber filed "applicant return to conditional order of dismissal arguing almost the same positon as the Respondent return and motion to dismiss. PCR Counsel Gruber omitted several facts in the "applicant return."

1) According to Pelzer v. State, 662 SC 2d 618 (2008), the Petitioner is entitled to an evidentiary hearing to contest whether or not statutory of limitation exceed the one year PCR Act. And
2) PCR Counsel Truslow had filed the Petitioners first PCR petition but the Clerk of Court did not file it, and as a result of that the Petitioner is entitled to equitable tolling relief.

On May 19, 2008, The Honorable Judge Roger M. Young Sr., had issued a final order in contrary to Pelzer v. State, 622 SC 2d 618 (2008) denying the Petitioner's PCR without an evidentiary hearing to determine whether or not the Petitioner meets the one year statutory limitation on

[5] Obviously, PCR counsel did not review the documents from the Petitioner's paid counsel Truslow regarding the Petitioner's PCR. If the Petitioner would had had an evidentiary hearing the Petitioner's could had proved that the Truslow filed a timely PCR and/or the Petitioner could of put up evidence showing the same at the PCR hearing.

the grounds "The Court finds that applicant failed to present sufficient cause for filing more than three 3 years outside the statute of limitations."

Furthermore, the Petitioner was denied a collateral review Appellate Counsel pursuant to then Rule 227 (C) of the South Carolina Rules of Civil Procedure. Since PCR counsel appointment at the PCR hearing, PCR Counsel or the office of the Indigent Appellate Defense was "required to provide the Supreme Court with a letter stating that as an officer of the court counsel was unable to set forth any arguable basis for asserting that the trial Court finding regarding [Petitioner] Post-Conviction Relief application was improper," and the Petitioner was then allowed to file an explanation as to why the determination was improper. Upon information and belief, PCR Counsel Gruber withdrew off the petitioner's PCR after she had filed a collateral appeal but the petitioner was not provided collateral review Appellate Counsel on his PCR appeal.[6] Rule 71.1 (g) of the South Carolina Civil Rules of procedure states:

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[6] In Turner v. North Carolina 412 F.2d 486 (4th Cir.1969), the 4th Circuit Court of Appeals held that trial counsel was ineffective for failure to perfect the appeal. There, counsel gave oral notice to the court of his desire to appeal at defendant's request. However, counsel never took any further action in connection with the appeal. The appeal was later dismissed for lack of prosecution. This court stated that after conviction:

> "When time is an important factor in obtaining appellate review, no one is in better position to insure the indigent defendant of the appeal which he has requested than counsel who has represented him at trial.
>
> After desire to take an appeal is shown by an indigent defendant the very least which counsel must do is inform the defendant of his right to appeal without cost; of the need for a transcript of the trial proceedings; and of the availability of this transcript without cost. If at this time appointed trial counsel decides that he cannot or will not continue to represent the defendant he must so inform the defendant, in addition to informing him of his right to appointment of other counsel, and of the procedure through which the trial transcript and appeal may be obtained if assistance of counsel is not desired."

Id. At 489.

The court held that petitioner was denied his right to assistance of counsel due to the inaction and neglect of his attorney. Id. See also Frasier v. State, 306 S.C. 158, 161, 410 S.E.2d 572, 574 (1991) (reviewing the denial of PCR and holding "counsel was ineffective in failing to perfect petitioner's appeal, and that petitioner was prejudiced thereby because but for counsel's deficient performance, petitioner would have taken a direct appeal").

In Mack v. State, 858 SE 2d 160 (2021), this court stated in part:

> "Mack filed a second PCR application alleging DNA counsel was ineffective for failing to timely appeal the denial of his application for post-conviction DNA testing...Two years later, the PCR court held a hearing on Mack's second PCR application and dismissed with prejudice his request for relief. Specifically, the PCR court held his second PCR application Mack filed a second PCR application alleging DNA counsel was ineffective for failing to timely appeal the denial of his application for post-conviction DNA testing. Mack's second PCR application and dismissed with prejudice his request for relief. Specifically, the PCR court held his second PCR application failed to state a cognizable claim for relief, was barred by the statute of limitations, and was successive to his previous application under the PCR Act. Mack appealed the PCR court's order, and the court of appeals affirmed the dismissal of his second PCR application. This court granted certiorari."

(g) Appellate Review; Continuing Representation. A final decision entered under the Act shall be reviewed according to the procedure specified by Rule 243, SCACR. If an applicant represented by counsel desires to appeal, counsel shall serve and file a Notice of Appeal as required by Rule 243, SCACR, and shall continue to represent the applicant on appeal unless automatically relieved under Rule 602, SCACR, or allowed to withdraw under Rule 264, SCACR. ***If the applicant is indigent, counsel shall assist the applicant in obtaining representation by the Division of Appellate Defense of the Office of Indigent Defense.***

ARGUMENT IN SUPPORT OF GRANTING [redacted]

Rule 71.1 of the South Carolina Rules of Civil Procedure, outlines the procedure for when the Petitioner's first filed a PCR in the Charleston County Court of Common Pleas. The PCR statue set forth the right to the Petitioner to have counsel on collateral review, and the responsibilities of PCR counsel of amending the PCR petition when appointed to the Applicant 's case, the burden of proof, preponderance of the evidence, on PCR.

Case laws by this Court informs the PCR judge duties to make a finding of fact of every issue that's raised by the Petitioner on PCR.

SC CODE 17-27-90 instructs the Applicants that every issue on PCR must be raised on PCR and that "Any ground finally adjudicated or not so raised, or ***knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence*** or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, ***unless the court finds a ground for relief asserted which for sufficient***

This Court stated the following in granting Mack a second PCR:

> "We therefore understand why Mack filed a second PCR application in this instance because there is no existing procedural mechanism that allows him to seek the appellate review to which he is statutorily entitled. As we held in Austin, we find Anders similarly applies to the DNA Act to safeguard an applicant's statutory right to seek appellate review and entitles him to the assistance of appellate counsel. See Odom v. State, 523 S.E.2d 753, 755-56 (1999) (stating "an applicant is entitled to a full adjudication on the merits of the original petition, or `one bite at the apple'" and noting Austin "never received a full procedural `bite at the apple' because he was prevented from seeking any review of the denial of his PCR application"). Consequently, Mack requests this Court to extend our decision in Austin v. State, 409 S.E.2d 395 (1991)".

Pursuant to SC CODE 17-27-45 (B), this case constitute new case law on collateral review. Since the Petitioner's PCR petition is still filed in the Charleston county Court of Common Pleas, the Petitioner should be entitled to relief from the Mack v State and/or Austin v State supra cases because the Petitioner did not get his full and fair bite of the apple regarding his first PCR petition because the Petitioner's PCR counsel did not perfect his appeal. Assuming arguendo that Mack supra doesn't apply to the Petitioner under 17-27-45 (B) this court should fashion a remedy under due process clause of both the South Carolina constitution under Mathew v Eldridge, and/or under the United States constitution under Medina

reason was not asserted or was inadequately raised in the original, supplemental or amended application."[7]

In Kelly v State this Court stated that it will not adopt the same procedures as Martinez v Ryan. Regarding the substantive component of SC CODE 17-27-90 ***"knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence",*** the Martinez Court stated the following regarding the prisoners knowledge requirements on first time PCR proceeding:

> "Without the help of an adequate attorney, a prisoner will have similar difficulties vindicating a substantial ineffective-assistance-of-trial-counsel claim. Claims of ineffective assistance at trial often require investigative work and an understanding of trial strategy. When the issue cannot be raised on direct review, moreover, a prisoner asserting an ineffective-assistance-of-trial-counsel claim in an initial-review collateral proceeding cannot rely on a court opinion or the prior work of an attorney addressing that claim. Halbert, 545 U.S., at 619. To present a claim of ineffective assistance at trial in accordance with the State's procedures, then, a prisoner likely needs an effective attorney.
>
> The same would be true if the State did not appoint an attorney to assist the prisoner in the initial-review collateral proceeding. **The prisoner, unlearned in the law, may not comply with the State's procedural rules or may misapprehend the substantive details of federal constitutional law.** Cf., e.g., id., at 620-621 **(describing the educational background of the prison population). While confined to prison, the prisoner is in no position to develop the evidentiary basis for a claim of ineffective assistance, which often turns on evidence outside the trial record.**[8]
>
> A prisoner's inability to present a claim of trial error is of particular concern when the claim is one of ineffective assistance of counsel."[9]

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[7] The burden of proof in both Rule 71.1, preponderance of evidence, and SC CODE 17-27-90, sufficient reasons are two different burden of proof where the latter one is unconstitutionally vague as applied to the Petitioner and/or on its face.

[8] See Fuentes v. Shevin, 407 US 67 FN 13 (1972) (They may not even test that much. For if an applicant for the writ knows that he is dealing with an uneducated, uninformed consumer with little access to legal help and little familiarity with legal procedures, there may be a substantial possibility that a summary seizure of property—however unwarranted—may go unchallenged, and the applicant may feel that he can act with impunity).

[9] The Petitioner's liberty interest to 6th amendment right to trial counsel, and due process right to direct appeal counsel, is selective incorporated under the substantive due process clause in which then activate the standard of proof Strickland performance/prejudice prong when the court considers the Petitioner's the right to the effective assistance of counsel at trial and/or direct review and/or in cases where constitutional counsel is granted on case by case basis. The right to effective assistance of counsel whether state created or not is bedrock principle in our justice system. It is deemed as an "obvious truth" the idea that "any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." Gideon v. Wainwright, 372 U.S. 335, 344 (1963). Indeed, when granted by the constitution itself or when counsel is state created the same Strickland standard of proof, performance/prejudice prong Should be mandated to guard against the Petitioner

QUESTION 1

WHEN THE STATE DEPRIVES THE PETITIONER OF PROPERTY INTEREST TO A CAUSE OF ACTION OF INEFFECTIVENESS OF TRIAL COUNSEL AND LIBERTY INTEREST TO A FAIR HEARING ON PCR, IS THERE A DISTINCTION OF THE STANDARD OF PROOF UNDER THE DUE PROCESS BETWEEN STATED CREATED COUNSEL AND CONSTITUTIONAL RIGHT TO COUNSEL?

The constitutional answer to that question is "no". The Supreme Court repeatedly stated that when property[10] and liberty interest are in play, regardless of the fact, if its state created liberty interest or the Liberty interest derives from constitution itself, there's no distinctions between them.[11]

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raising on PCR the subsidiary right to ineffectiveness of trial counsel or direct appeal counsel because the right to effective assistance of counsel is the foundation for our adversary system. This is one of the Mathew v Eldridge test, private interest at stake, that's being deprived by the vague "sufficient reason" test in SC CODE 17-27-90. The vague application of the sufficient reason standard leaves room for arbitrary application of the rule on PCR. The same is said for the application of the substantive components of 17-27-90 "knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence" is not applied similarly situated to Applicants such as the Petitioner. For example, in Mack v State and Austin v State supra, this Court fashioned a remedy where PCR counsel failed to file a collateral appeal to this court. Both cases PCR counsel violated the PCR appeal statute. Because of the applicants in those cases did not have knowledge of PCR counsel not filing the appeal, this Court stated that Mack and Austin met the substantive components of not knowing. Then in both Austin and Mack this court adopted the standard of proof in Strickland v Washington in determining that PCR counsel was ineffective. But in Aice v State something more is required in order for this court to fashion a remedy and apply Strickland performance/prejudice prong standard of proof for PCR counsel's deprivation of the Petitioner of a subsidiary right of ineffectiveness of constitutional counsel.

[10] Under the principles of Logan, it cannot be disputed that petitioner's right of action is a species of property protected by the Fourteenth Amendment. See Logan, 455 U.S. at 428 & n. 4, 428-33. Once created, "the adequacy of statutory procedures for deprivation of a statutorily created property interest must be analyzed in constitutional terms." Logan, 455 U.S. at 432 (quoting Vitek v. Jones, 445 U.S. 480, 490-91 & n. 6 (1980)

[11] The Six Amendment is selective incorporated in the within the substantive Liberty interest clause of the Fourteenth Amendment. See Thompson, 490 U.S. at 460 ("Protected liberty interests may arise from two sources — the Due Process Clause itself and the laws of the States." See Bd. Of Regents of State Coll. V. Roth, 408 U.S. 564, 577 (1972) (Property interests are not created by the Constitution but are created and defined by "an independent source such as state law."). A property interest in a benefit protected by the due process clause results from a "legitimate claim of entitlement" created and defined by an independent source, such as state or federal law. Id at 577; Bishop v. Wood, 426 U.S. 341, 344 & n. 7 (1976). The "significant substantive reduction" or "substantive limitation" standard is the standard that has been applied by federal courts in most liberty interest cases. See Olim v. Wakinekona, 461 U.S. 238, 249 (1983) ("State creates a protected liberty interest by placing substantive limitations on official discretion.");significantly reduced in a substantive manner or eliminated if certain exceptions do not apply. Regarding the first step, the Supreme Court has long held that "[a] state-created right can, in some circumstances, beget yet other rights to procedures essential to the realization of the parent right." Conn. Bd. Of Pardons v. Dumschat, 452 U.S. 458, 467 (1981). Stated differently, a state statute may, depending on how it is drafted, trigger federal liberty interests and attendant procedural due process protections for those affected by the law. See id. But the extension of federal due process to state laws is circumscribed and is only derived, if at all, from the text of the statute, rule, or policy at issue.

When the State of South Carolina pushes the Petitioner from direct review, where constitutional right of counsel is mandated, to collateral review, where counsel is not allowed, some post-deprivation and/or post-deprivation procedural protection in South Carolina Code and/or Civil Procedure that will put the Petitioner on notice of the standard of review[12] when PCR counsel is not functioning within procedural professional norms in raising various claims of ineffectiveness of plea/trial counsel, or ineffectiveness of direct appeal counsel.[13]

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[12] "It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standard- less that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide without any legally fixed standards, what is prohibited and what is not in each particular case. See e.g. Lanzetta v. State of New Jersey, 306 U.S. 451; Baggett v. Bullitt, 377 U.S. 360

One of the basic purposes of the due process clause has always been to protect a person against having the government impose burdens upon him except in accordance with the valid laws of the land. Implicit in this constitutional safeguard is the premise that the law must be one that carries an understandable meaning with legal standards that the Court must enforce. Mattison v. Dallas Carrier Corp. 947 F.2d 95 (4h Cir. 1991)

To satisfy due process, Rule of law must contain standards that can be known in advance, conformed to, and applied rationally. The first principle of due process, embraces a rule of law which contain standards that can be known in advance, conformed to, and applied rationally. The doctrine of the Supremacy of Law is "a doctrine that the sovereign and all its agencies are bound to act upon principles, not according to arbitrary will; are obliged to follow reason instead of being free to follow caprice." R. Pand, The spirit of Common Law 113.

[13] For example the united states supreme court in Cuyler v Sullivan 446 US 335,334(1980) cited Fitzgerald v Estelle 505 F.2d 1334, 1345-46 (5th cir.1974)(enbanc)(Gold, J concurring in part and dissenting in part, cert denied 422US 1011; and West v Louisiana 478 F.2d 1026,1032-34(CA5 1973) Vacated and Remanded,510 F.2d 363(1975)(enbanc) in stating that State action stems from the State defective appointment of counsel in general. In Fitzgerald supra the court stated the following:

> "Whether counsel is [appointed] or retained, the necessity for state action is satisfied because the state adjudicator machinery is extricably intertwined with the conduct of an accused person's attorney. See Shelly v Kraemer 334 US 1(1948) (the Supreme Court held that state action was supplied by the involvement of the State adjudicatory machinery in enforcement of ostensibly private racially restrictive covenants)
>
> The adjudication of State criminal cases is a vital function of the State in the performance of which it strictures operates and regulates an intricate and powerful arm of government. It provides for judges, set their pay and qualifications and designates their mode of selection; and, if the method is electoral, supervise it. The State furnishes the physical facilities and court functionaries and provides for selection, summoning and paying jurors. From arrest to ultimate release, and even afterwards on probation or parole, the accused is at least to some degree in the hands of this system. The lawyer, appointed, or retained, is a crucial part of the adjudicatory machinery. Indeed, since Gideon v Wainwright 372 US 335(1963), he has been not merely important but knowledgeably waived, the proceedings cannot validly take place without him.

The Fourteenth Amendment articulates a prohibition against any state deprivation of life, liberty, or property without due process of law. The rule is enunciated in Ingraham v. Wright, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977):

Application of this prohibition requires the familiar two-stage analysis:

1. This Court must first ask whether the asserted individual interests are encompassed within the Fourteenth Amendment's protection of "life, liberty or property";
2. if protected interests are implicated, this Court then must decide what procedures constitute "due process of law."

In Addington v. Texas, 441 U.S. 418 (1979), the United States Supreme Court discussed the function of standards of proof:

> The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to "instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." In re Winship, 397 U.S. 358, 370, (1970) (Harlan, J., concurring).
>
> Addington, 441 U.S. at 423.

"[I]n any given proceeding, the minimum standard of proof tolerated by the due process requirement reflects not only the weight of the private and public interests affected, but also a societal judgment about how the risk of error should be distributed between the litigants." Santosky v. Kramer, 455 U.S. 745, 755 (1982).

MATHEW V ELDRIDGE TEST

Under the due process clause of South Carolina constitution this court follows in the PCR setting the United States Supreme Court, Mathews v. Eldridge, 424 U.S. 319 (1976), balancing test in deciding procedural due process questions:

> "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

QUESTION 2

WHETHER SC CODE 17-27-90 "SUFFICIENT REASON" TEST IS UNCONSTITUTIONAL VAGUE AS APPLIED TO THE PETITIONER AND/OR ON ITS FACE BECAUSE IT DOESN'T APPLY STANDARD OF PROOF IN DETERMINING WHETHER OR NOT THE PCR COUNSEL PROTECTED THE PETITIONER'S CONSTITUTIONAL LIBERTY INTEREST RIGHT TO RAISE INEFFECTIVE ASSISTANCE COUNSEL ON FIRST TIME PCR?

The answer to this is yes. Vague standard of review procedures are unconstitutional.

Aice v State supra doesn't provide a remedy under the sufficient reason test of raising claims that was not raised by the Petitioner because of lack of legal knowledge of the ineffectiveness of constitutional counsel. South Carolina gives the Petitioner a state created right to counsel, and various other stated created rights under the PCR statute but no standard of proof when PCR counsel fails to adjudicate an issue cognizable on PCR because substantive issues was literally either abandoned by PCR counsel and/or when PCR was functioning below professional norms where the United States Supreme Court stated various times is attributable to the State.

The private interest at stake in the Petitioner not raising issues of ineffectiveness of constitutional counsel is strong. There's a substantial erroneous risk of ineffectiveness of constitutional counsel not being raised on PCR because of a arbitrary standard of proof.

ARBITRARY AND IRRATIONAL PCR PROCEDURES

A) **INADEQUATE NOTICE OF STANDARD OF REVIEW WHEN PCR COUNSEL DOESN'T PERFORM WITHIN REASONABLE PROFESSIONAL NORMS IN WHICH THE SOUTH CAROLINA COURT IS ARBITRARILY APPLING INCONSISTENTLY AND INDISCRIMINATELY THE STANDARD OF REVIEW OF INEFFECTIVENESS OF PCR COUNSEL ON PCR**

In short, when a State opts to act in a field where its action has significant discretionary elements, it must nonetheless act in accord with the dictates of the Constitution—and, in particular, in accord with the Due Process Clause. Id. 469 U.S. at 401,

There is no constitutional requirement that states provide an avenue of direct appeal for criminal defendants. McKane v. Durston, 153 U.S. 684, (1894). The same is said regarding the PCR procedure. But those States that do must afford the Petitioner the right to counsel on appeal, in which is a liberty interest right to counsel. See Douglas v. California, 372 U.S. 353 (1963). The same is too South Carolina Legislature mandates a State created right to counsel on PCR. Is there's a difference in standard of review in determining when counsel is effective, especially when there's no distinction between constitutional liberty interest to counsel or State created right to counsel? Both if arbitrarily taken because of unfair State procedures violates the due process clause. Evitts v. Lucey held this due process requirement would be but "a futile gesture unless it comprehended the right to the effective assistance of counsel." 469 U.S. at 397. Is it irrational for the legislation of South Carolina to make a distinction between State created counsel and constitutional counsel in order to determine when one is competent

and the other not competent? A defective evidentiary standard or vague standard of review in determining the performance of counsel on PCR violates due process. See e.g. Lanzetta v. State of New Jersey, 306 U.S. 451; Baggett v. Bullitt, 377 U.S. 360 ("It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standard- less that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide without any legally fixed standards, what is prohibited and what is not in each particular case). The vague application of the sufficient reason standard leaves room for arbitrary application of the rule on PCR.

SC CODE §17-27-90, reads in pertinent part:

> "By ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has tried to secure relief may not be the basis for a subsequent application, ***unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original supplemental or amended application.***"

Id.

The substantive components of 17-27-90 "knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence" is not applied similarly situated to Applicants such as the Petitioner. For example, in Mack v State and Austin v State the State Supreme Court fashioned a remedy where PCR counsel failed to file a collateral appeal to the State Supreme court.

SC CODE 17-27-100 states in pertinent parts:

PCR APPEAL

> A final judgment entered under this chapter may be reviewed by a writ of certiorari as provided by the South Carolina Appellate Court Rules.

In Mack and Austin's cases PCR counsel violated the PCR appeal statute. Because of the applicants in those cases did not have knowledge of PCR counsel not filing the appeal, this Court stated that Mack and Austin had met the substantive components of not knowing. Then in both Austin and Mack this court adopted the standard of proof in Strickland v Washington in determining that PCR counsel was ineffective. But in Aice v State something more is required in order for this court to fashion a remedy and apply Strickland performance/prejudice prong standard of proof for PCR counsel's deprivation of not "knowing" the Petitioner primary right of ineffectiveness of constitutional counsel.

It is arguable that the statutory right to counsel to which is mandated under South Carolina law entitles the Petitioner's PCR counsel would not be taken from him arbitrarily, in violation of due process, if it does not embrace the right to effective counsel—at least for those claims that can

be raised only for the first time in post-conviction proceedings. After all, as Martinez now establishes, in that context the need for effective counsel is as great as the need for effective counsel on direct appeal.

By contrast, Rule 71.1 (d) expressly provides such a right, and to arbitrarily deprive the Petitioner of that right in South Carolina by tolerating ineffective assistance of that statutorily endowed counsel arguably violates due process.

Nor can the Petitioner accept that the South Carolina Legislature would tolerate the happenstance that some competent attorneys would actually do an adequate job while other competent but less conscientious attorneys would not. That would engender just the kind of arbitrary deprivation of a statutory right that the entitlement doctrine disfavors, and this court analysis in determining whether or not a statute is invalid always avoid statutory interpretation that invites such a constitutional conflict. South Carolina PCR Act invites this type of conflict and it has been warned repeatedly and implicitly by the United States Supreme Court to fix the PCR statute because one day a case is going to come along for this court to answer the question in Martinez: Whether the Petitioner has a effective assistance of counsel of collateral review counsel regarding first tier raising ineffectiveness of counsel on PCR. This Petitioner prays that this court answer that question in this case and such other and further relief this Court seems just.

[redacted] LEGAL STANDARD

The Supreme Court has the power to issue writs of mandamus pursuant to the S.C Constitution. See Edwards v. State, 678 S.E.2d 412 (2009) (citing S.C. Const. Art. V subsection 14-3-310). The writ of mandamus is the highest judicial writ known to the law and according to long approved and well established authorities, only issues with cases where there is a specific legal right to be enforced or where there is a positive duty to be performed, and there is no other specific remedy. Willimon v. City of Greenville, 132 S.E. 2d 169, 170-71 (1963). The primary purpose or function of a writ of mandamus is to enforce and established right, and to enforce a corresponding imperative duty created or imposed by law. (Id) it is designed to promote justice, subject to certain will-defined qualifications. (Id) Its principle function is to command and execute and not to inquire and adjudicate; therefore, it is to enforce one which has already been established. Id.

Element 1- A Duty of Respondent to Perform the Act.

The Charleston Clerk has several duties under the Clerk Rules and PCR statute as follows:

South Carolina Clerk manual 6-2-3. Application for Post-Conviction Relief:

Duty 1:

> Within five (5) days of filing, forward a copy of the application to the Attorney General Office and the Circuit Solicitor, and

Duty 2:

South Carolina Code of Law, §17-27-40(A) states in part:

> "...The Clerk shall docket the application upon its receipt and promptly bring it to the attention of the Court and deliver a copy to the Solicitor of the Circuit in which the applicant was convicted and a copy to the Attorney General."

Furthermore, the State of South Carolina has a duty under Rule 12 (A) of the South Carolina Rules of civil procedure to timely respond to the Petitioner's PCR petition. Rule 12(A) states in-parts:

> "...The State South Carolina shall answer or otherwise respond to an application for Post-Conviction Relief within...90 days if it arises out of trial."

Also, the Charleston County Judge has a duty pursuant to South Carolina Code of Laws, subsection 17-27-70 (A) "within thirty (30) days after the docketing of the application, or within any further time the Court may fix, the State shall respond by answer or by motion which may be supported by affidavits"

The Respondent, The State of South Carolina, has never gone for an extension of time after the Respondent exceeded its time to respond to the Petitioner PCR petition.

Nor has the Charleston County Judge fixed any time after the State of South Carolina exceeded its time to respond to the Petitioner's PCR petition. Pursuant to §17-27-40(A), it is the duty of the Charleston County Clerk to promptly bring (PCR petition) to the attention of the Court.

Element 2- The Ministerial Nature of The Act.

The mandatory language such as will, must, and shall in Rule 12(A), and §17-27-40(A), and the Clerk of Court manual shows the ministerial nature of the PCR rules and statutes that the above captioned Respondents are ignoring.

Element 3- The Petitioner specific legal rights for which discharge of the duty is necessary

The Petitioner has a specific right to a second PCR under newly discovered evidence of actual innocence pursuant to South Carolina Code of Laws, §17-27-45 (D). See District Attorney Office for Third Judicial Dist. V. Osbourne 129 S.Ct. 3208 (2009) (The due process clause imposes procedural limitations on a State's power to take away protected entitlements) see e.g. Jones v. Flowers, 547 U.S. 220, 226-239 (2006).

Pursuant to South Carolina Code of laws §17-27-70 (A), the Respondent Judge must issue, after thirty (30) days of the Petitioner filing the PCR petition, an extension of time "only" if the Respondent, State of South Carolina, request the Respondent Judge for more time in order to respond to the Petitioner PCR petition. The Respondent, State of South Carolina, have not requested the Respondent Judge for an extension of time under both §17-27-70 (A) and Rule 12(A). Lastly, the Respondent Judge has a ministerial duty, and the Petitioner has a specific right, under the South Carolina Constitution Article I subsection 9 to give the Petitioner a speedy PCR remedy. Article I section 9 of the South Carolina Constitution states:

> "All Courts shall be public and every person shall have speedy remedy therein for wronged sustain."
>
> Id.

A PCR action is a civil action. See Wade v. State, 559 S.E. 2d 843, 844 (2002) (citing 17 S.C. Jur. Subsection 2 (1993) (state Post-Conviction Relief is a civil action) Article I, §9 applies to civil remedies only. State v. Lagerquist, 176 S.E. 2d 141, 143 Certiorari denied 91 S.Ct. 912, 401 U.S. 937.

Element: 4- A lack of any other legal remedy

The Petitioner lacks a legal remedy, especially, an appeal in this court because South Carolina Code of Laws, §17-27-80, specifically states that the PCR judge must make specific finding of fact and state expressly the conclusions of law relating to each issue presented. In Marlar v. State, 656 S.E. 2d 266 (2007), this Court held that the PCR judge failure to specifically rule on the issues precludes appellate review of the issues. See Pruitt v. State, 423 S.E. 2d 127 (1992). As a result of that, the petitioner doesn't have a remedy under South Carolina law to force the Respondent to timely hear his PCR petition.

CONCLUSION

The petitioner is requesting the court to grant this petition and/or grant such other and further relief this court seem just and proper.

Part (A.) appendix. (1 of 2.)

Pages 1-3. Opening introduction and Newly discovered evidence. Co-defendant sign affidavit.

Pages 4, 5. Explaining of Premier investigator George Hawkins affidavit.

Pages 6, 7, 8, 9. Breaking down the dates on affidavit. Evidence of Appeal Attorney Douglass Truslow retainment and ineffective assistance of Counsel representation in the form of Correspondences.

Page 10. §17-27-80, Pruitt vs. State, Rule (b.)(6)...
Material evidence of P.C.R. Counsel Courtney Gruber's ineffective assistance of Counsel representation in the form of Correspondences.

Page 11. Points to Trial Transcripts. Exidence of exhibits agree upon by Court.

Page 12. high lighting the pages of Solicitor Beck's perjury.
Evidence of perjury during Trial.

Page 13. further evidence of perjury in Trial.

(2 of 2.)

Page 14. Solicitor Beck Continued perjury

Page 15. Evidence of defense Counsel Harry Shaw's perjury in Trial and ineffective representation.
Material evidence.

Page 16, 17. Turner VS. North Carolina, 412 F.2d 486

Part (B) Appendix. (1 of 3.)

Page 1. South Carolina Code of Laws, §17-27-45(C), 17-27-70, 17-27-80. Rule 12(A)..

Page 2, 3, 4, 5, 6. Procedural back ground facts.

Page 7. Due process of law violation

Page 8-9. Rule 227(C), Rule 71.1(g), Rule 243 SCACR, Rule 264 SCACR.. South Carolina Code §17-27-90, 17-27-45(B)... Turner vs. North Carolina, 412 F.2d 486. Frasier vs. State, 306 S.C. 158. Mack vs. State, 858 S.E. 2d 160, Austin vs. State, 409 S.E. 2d 395. Odom vs. State, 523 S.E 2d 753, 755-756

Page 10. South Carolina Code of Law § 17-27-90 Halbert, U.S. at 619. Fuentes vs. Shevin, 407 U.S. 67 FN 13. Gideon vs. Wainwright, 372 U.S. 335, 334

Page 11. State Created Counsel and Constitutional right to Counsel. Mack vs. State and Austin vs. state. Logan, 455 U.S. at 428, 432... Quoting vitek vs. Jones, 445 U.S. 480... Thompson, 490 U.S. 460... Coll vs. Roth, 408 U.S. 564... Bishop vs. Woody 426 U.S. 341, 344... Olim vs. Wakinekona, 461 U.S. 238, 249... Pardons vs. Dumschat, 452 U.S. 455, 467..

Page 12. Due process clause. Lanzetta vs. state, 306 U.S. 451. Baggett vs. Bullitt, 377 U.S. 360... Mattison vs. Dallas Carrier Corp. 947 F.2d 95 (4th cir 1991)... Cuyler vs. Sullivan, 446 U.S. 335 (1980)... Cited Fitzgerald vs. Estelle 505 F.2d 1334, 1345-46... Shelly vs. Kraener 334 U.S. 1 (1948)... Gideon vs. Wain Wright 372 U.S. 335 (1963)

Page 13. ingraham vs. Wright, 430 U.S. 651, 97 S.Ct. 1401. Addington vs. Texas, 441 U.S. 418 (1979)... in re Winship, 397 U.S. 358, 370... Santosky vs. Kramer, 455 U.S. 745, 755. Mathew vs. Eldridge, 424 U.S. 319 (1976)

Page 14. §17-27-90, Sufficient Reason... Kane vs. Durston, 153 U.S. 684 (1894).. Douglass vs. California, 372 U.S. 353.. Evitts vs. Lucey, 469 U.S. at 397.

Page 15. See Lanzetta vs. State of New Jersey, 306 U.S. 451, Baggitt vs. Bullitt, 377 U.S. 360... §17-27-90, §17-27-100

Page 16. Rule 71.1(b)... Edwards vs. state, 678 S.E. 2d 412 (2009)... Citing ~~S.Ct~~ S.C. Const. art. V subsection 14-3-310... Willimon vs. City of Greenville, 132 S.E. 2d 169, 170-171 (1963)...

~~Rule~~ Page 17. South Carolina Code of Law §17-27-40 (a)... Rule 12(a)... §17-27-70(a), §17-27-40(a)

Page 18. South Carolina Code of Law, §17-27-45(D) See District attorney office for third Judicial dist. Vs. Osborne, 129 S.Ct. 3208 (2009)... Jones Vs. Flowers, 547 U.S. 220, 226-239... South Carolina Code of Law, §17-27-70(A) and Rule 12(a)... South Carolina Const. Article 1, subsection 9... Wade Vs. State, 559 S.E. 2d 843, 844 (2002)... South Carolina Code of Law, §17-27-80 Marlar Vs. State, 656 S.E. 2d 266 (2007) Pruitt Vs. State, 423 S.E. 2d 127 (1992)...

Part C.

The Supreme Court of South Carolina,
Court of Appeals,

Tarone D. Johnson, 260921. Petitioner,	Common Pleas Charleston Cty.
VS.	
The State of South Carolina, Danielle Dixon, Assistant Attorney General Respondent,	Appellate No. 2024-001650 P.C.R. # 2019-CP-10-2870

Appeal,

The Court of Appeals do not sit as self directed boards of Legal inquiry and research, but essentially as arbiters of Legal questions presented and argued by parties before them.

And the purpose of an appeal is to evaluate the reasoning and results reached by the Court below.

§17-27-80 states, The Court shall make specific findings of facts and States expressly it's Conclusion of Law, relating to issues presented.

(SCRCP) Ruling on a Rule 12(b)(6), Motion to dismiss Must be based solely upon the Allegations.

Respondent have yet to adjudicate any of the issues enclosed in this petition. Compelling Petitioner to Appeal this decision and any future filing dealing with this Conviction.

Let's pretend Like we are all intelligent folks playing a game of Spade's.

adjudication means: The act or process of adjudicating.

Respondent neither the state of South Carolina have given an intelligent response to whether or not Petitioner's petition can be acknowledge under the same scope and sphere of light as Austin and Mack. if not. Why not?

They are all similiar in nature of each being unaware of their Appeal attorney's ineffective assistance until Later on.

Petitioner states, that he is being prejudice by Respondent and the State of South Carolina, when they dismiss filings without sharing a theory into why each thinks

their particular way.

Respondent and the State seem to think that they are dealing with some super un-intelligent prisoner's in the department of Corrections.

if the Statute of ~~timing~~ time can not be the only reason for dismissal of a filing. How then is Respondent getting the ability to dismiss solely on the Statute of time. When Respondent can not (Trump) the actual black and white paper-works of both Appeal and P.C.R. Counsel's ineffective assistance of Counsel representation.

We have proof of this.

We have actual tangible proof of perjury on the part of the Solicitor and defense Counsel.

Where is Respondent's voice on matters such as these?

When, 277 S.C. at 175, 284 S.E. 2nd at 359, states, "We Condemned the Solicitor's personal opinion (being) explicitly injected into the jury's deliberation as though it were in it-self evidence."

"Solicitor's are bound to rules of fairness in their closing argument." State vs. North Cutt, 372 S.C. 207, 222, 641 S.E. 2nd 873, 881 (2007).

The Supreme Court has condemned a prosecutor's closing argument in which he suggest to the jury his personal impression, 'the defendant is guilty.'

Where now, petitioner have to ask, how is this Court after reading it's content, still willing to dismiss petitioner's petition with out a hearing? When it is being shown tangible evidence of perjury first hand.

"The test for reversible prosecutorial misconduct" in a prosecutor's closing argument is the prosecutor's remarks or conduct must in fact have been improper, and... such remarks or conduct must have prejudicially affected the defendant substantial rights so as to deprive the defendant of a fair Trial...

Code 1976, §16-9-10, perjury. (A)(1) it is unlaw-ful for a person to will-fully give false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this state.

And if that be so. How then is Respondent continuing to argue against tangible Material evidence of a Crime taking place that they are now seeing first hand.

The paper-works provided with in P.C.R. petition is tangible evidence of a Crime having too take place. A Crime in which all who have read this petition are now enlighten of, and Complicit too, if petitioner's petition is dismiss.

We can't be for fighting Crime with one hand. While committing Crime with the other.

The evidence in regards to solidifying the point of petitioner's Conviction being unlawfull is insurmountable. As thoroughly pointed out in the argument made in (Part B) of this Appeal.

Part B. of this petition have been redacted and re-formatted as a reply to why Respondent and Judge Jennifer McCay's decision to dismiss, is in error. Part B. of this Appeal goes into great details to explain/out-line petitioner's Numerous issues. With ~~the~~ statutes and Case Laws included, along with Hypothe-ticals.

"After reviewing the entire record and considering the unique combination of facts in this case, we hold applicant's application warrents a hearing despite it's successive-ness." David Earl vs. South Cardina, 277 S.C. 474 (4th Cir.)... Code 1976, §17-27-90, Post Conviction Procedure Rule 5.

Petitioner now ask South Carolina Court of Appeals, how is Petitioner not being presudice by the lower Court's decision to dismiss. When South Carolina Court of Appeals have either over-turn or grant so many others for similiar situations in their case.

When, McCray vs. State, S.E. 2d 241 (1992), The South Carolina Supreme Court ruled that remand for a new P.C.R. hearing was necessary where the P.C.R. order failed to make findings of facts on the specific allegations raised.

~~On~~

Any order denying a defendant's request for post conviction relief would be remanded for rehearing where it failed to directly address the defendant's claims that his Trial Counsel was ineffective. Truitt vs. State, §17-27-80.

(S.C.R. Crim. P) South Carolina Rules of Criminal Procedures Says that a Petitioner's allegations must be met with a Challenge.

Petitioner state that the dismissal of his P.C.R. petition would be Criminal. When Respondent and the State of South Carolina are reading for themselves (Material Evidence) of a Crime transpiring at the Trial Stage of Petitioner's Conviction.

Trial attorney Harry Shaw's ineffective representation can not be written off as Trial strategy, Neither Can Respondent write off the perjury situation of defense Counsel.

How then is Petitioner being dismiss as if his Allegations have no merits?

'Relevant Evidence' Means evidence having any tendency to make the existance of any fact that is of Consequence to the determination of the action more probable or less probable than it would be without the evidence.
Article IV. Relevancy and its limits.
Rule 401, SCRE.

Petitioner have just presented to the Court's of Appeal Material (Relevant Evidence) of actual wrong doing on the part of Public officials.

This egregious wrong doing have caused petitioner to have spent 25 years of his life in prison for a crime that he absolutely had nothing to do with.

Petitioner have even went as far as providing for this court a sign, notarize affidavit from Co-defendant stating that petitioner is innocent of this crime.

in closing, petitioner ask Respondent and the State of South Carolina Court of Appeals to be extremely careful going forward in their decision making process. Because this filing can now be used as actual proof of South Carolina Court of Appeals willing complicity to comply with the bad acts on the part of other public officials.

Name: Tarone Johnson

The State of South Carolina, in the Supreme Court
Court of Appeals

Appealing Chief Admin. Judge Jennifer McCoy
Charleston County Court of Common Pleas
Appellate Case No. 2024-001650

Tarone D. Johnson, 260921 Petitioner,

vs.

State of South Carolina, Respondents,
Danielle Dixon

Certificate of Service

I, Petitioner Tarone Johnson 260921, Certify that I have this day serve a copy of this filing upon the following persons by depositing same in the United States Mail.