

Exhibit # 30.

Affidavit

AND

Declaration

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IN THE STATE OF SOUTH CAROLINA

2

Affidavit and Declaration of Fact

Incorporated

I, Ben Robert Stewart, hereby swear or affirm under penalties for perjury pursuant to 16-9-10 et seq. South Carolina Code that the following statements are true and correct upon belief or information contained herein incorporated in the declarations of facts pursuant to 28 USCA § 1746, unsworn, declarations, under penalty of perjury

2. for the following case number:
- ① Appellate Case No: 2009-142106,
  - ② State v. Stewart, Op. No 2012-4-P-657 (S.C. Ct. App filed December 12, 2012)
  - ③ 2012-CP-46-04229
  - ④ 2013-CP-46-3731
  - ⑤ 2023-001478, Appellate Case No:

3. There is indeed an injury in the intentional waiting game in a ten year and four month delay in resolving mandated PCR claims, however, the state, refrained from answering the allegations in pretrial Emergency Writ of Habeas Corpus (B2) and Post Conviction Relief I am incorporating my declarations to;

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IN THE UNITED STATES DISTRICT COURT pg 1  
FOR THE DISTRICT OF SOUTH CAROLINA

Ben Robert Stewart,  
Plaintiff,

v.

Ola A. Johnson, Sarah E. Ship,  
and Angie Bryant, Off/Ind  
Defendants,

Case No:

0:24-cv-04655-JFA-SVIT

Declaration of Plaintiffs  
Objections to Report And  
Recommendation

Plaintiff's Declaration

I, Ben Robert Stewart, hereby certify that the foregoing is true and correct upon best of knowledge and swear to penalty of perjury pursuant to 28 USCA § 1746, unsworn, declarations under penalty of perjury, and says that default judgment should be ruled upon in this instant case and I base factual and legal support in my objections to report and recommendation.

I filed a Motion for Extension of Time dated October 8, 2024 and debit form paid postage on October 8, 2024.

I have been requesting for legal materials e.g., envelopes, pen and paper from the prison staff since October 9, 2024

On October 03, 2024 I received Order of the Supreme Court of South Carolina denying my request to relieve Sarah E. Shipe after I filed a notice for a conflict of interest. see Exh #26.

On October 15, 2024 I filed Affidavit; Pleading A Special Matter; Petition For Injunctive Relief And Temporary Restraining Order; and Affidavit/Declaration Motion For Seizure of Person and Property in the Supreme Court of South Carolina, see Exh P.A.

On October 15, 2024 I met a fellow inmate by the name of Isaac Romell Williams, at the same prison as me, who PCR attorney did not include his "plea transcript," in the

record or otherwise admit it into evidence, and his Appellate PCR attorney (who works at the Office of Appellate Defense) same place as Sarah E. Shipe Esq. also presented and submitted an Appendix to the Supreme Court containing the transcript that was not properly submitted in court. Ms Shipe is a defendant in this instant 1883 action.

On October 16, 2024 I asked another inmate by the name of Anthony Clark, at the same prison as me, did the same things happened to him and when he looked at his index's he and I was sad by the fact that his appellate attorney did the same thing.

The State Attorney General's office reviews and file a Return and additional evidence if needed in appeal pursuant to 243 SCACR. I bet IF I continued my search it would be many other inmates in our positions. I

asked both Isaac and Anthony questions and asked <sup>10</sup> pg 4,  
them to write declarations and I got copies of their;  
Appendix's index; PCR index's and two other inmates  
see; Exhibit P1. Ben Robert Stewart Appellate case no:  
2023-001478 Index to Appendix) Ben Robert Stewart, Civil case no  
2013-CP-46-3731 Index to PCR) Declaration of Ben Robert  
Stewart,)

see; Exhibit P2, Isaac Romell Williams Appellate case no;  
2013-002147 Index to Appendix) Isaac Romell Williams, Civil case no  
2013-GS-10-7413 Index to PCR) Declaration of Isaac Romell  
Williams,)

see; Exhibit P3. Anthony Clark case no: unknown Index  
to Appendix) Anthony Clark, civil case no 2006-CP-400-  
6120 Index to PCR) Declaration of Anthony Clark,)

see Exhibit P4. Frederick Flowers case no: Appellate  
case 2016-001174 to Appendix) Frederick civil case no;  
2014-CP-10-5219 Index to PCR) Declaration of Frederick,

see; Exhibit P-5, Tony Tyrese Williams case no: 2024-000513 Appellate Case No to Appendix)

Tony Tyrese Williams case no: 2021-CP-40-0985 to Index to PCR) four pgs total.

These are four examples of people that are in the ~~indiv~~ identical indential position and circumstances in an appeal from a Post conviction relief proceeding and are indigent and are being unfairly represented and in fact are being denied and deprived of state and federal Laws as well as constitutional Laws; and professional conduct and misconduct is being violated and committed.

Furthermore examples of this behavior is outlined in United States v. Shaffer Equipment, Co. 11 F.3d 450 (4th Cir 1993) held government attorneys 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.

Because the State officials are aware of this behavior because they are required to file an Return pursuant Rule 243 SCACR it is indeed misconduct between both parties knowingly see; *Tower v. Glover*, where conduct under color of state law in view of conspiracy allegations state public defenders are not immune from liability under Section 1983 for intentional misconduct with state officials which deprive clients of federal rights, see; *Harvery v. South Carolina*, 310 F. Supp. 83 (D.C. S.C. 1970) held that South Carolina Post Conviction Remedies Act affords postconviction relief of a scope sufficiently broad to comply with the mandates and holdings of United States Supreme Court relating to federal review of state convictions, and there was no basis for holding that statutes impaired constitutional rights of convicts asserting that the efficacy of habeas corpus had been suspended or its use made more difficult. Moreover, from the baseline of the conspiracy,

trial attorney Kenneth D. Snow, failed to amend the Exhibit B-2 Pretrial Emergency Writ of Habeas Corpus and conspired to defraud the proceedings with the State Solicitor Walter W. Thompson on February 23, 2009, see; *In re Spell*, 372 S.C. 514, 642 S.E.2d 749 (2007) held that attorney's misconduct in failing to amend Housing and Urban Development (HUD) settlement statement to accurately reflect transaction and in conspiring to defraud two mortgage companies warranted suspension from the practice of law for 12 months.

My PCR Attorney Ola A. Johnson likewise conspired to defraud the Post Conviction Relief hearing with the State Attorney General's officer Zachary Jones on April 17, 2023 by defrauding or otherwise shaming the mandated Post Conviction Relief allegations contained in Exhibit #1 PCR Application; Exhibit #3.A Amendment and Exhibit #3.B Second Amendment to Post Conviction Relief by knowingly and allowing or agreeing or engaging with trial attorney's actions by not reporting the obvious misconduct that was cited in the Exhibit #3.B Second Amendment to (PCR) by Mr. Johnson himself see; *In re Spell*, 642 S.E. 2d 749 (2007); *Tower v. Glaver*, 467 U.S. 914 (1984)

Due to Mr. Johnson's clear failure to report misconduct to the disciplinary counsel or the State Supreme Court pursuant to the Rules of Professional Conduct namely, Rule 8.3 and 8.4 because I raised that I was kidnapped under the Interstate Agreement on Detainers Act 18 USCA App 2; pursuant to Article VI (b) and did not apply to the act because I am adjudged mentally ill on Social Security disability which is being concealed, and I was not served a governor's warrant nor an ~~arrest~~ warrant but directly indicted unlawfully when I was not in the State of South Carolina see; Exhibit B-3 Direct Indictment no Warrant Numbers on date July 19, 2007, when I was in fact in Philadelphia County Jail. Mr. Johnson also cited the pistol charge in the Exhibit #3 B Second Amendment. I filed a disciplinary complaint to the Disciplinary Office in October, 2023 and an Amended Complaint in November 2023, further I filed a disciplinary complaint against (Angie Bryant York County Clerk defendant) (Robert Dudek PCR Appellate Counsel prior to Ms Shipe) (Walter W. Thompson, Solicitor who conspired ~~with~~ in pretrial Habeas Corpus proceedings) and trial

Attorney Kenneth D. Snow who failed to amend, conspired to defraud the proceedings.

I filed a disciplinary complaint against (Sarah E. Shipe defendant) on January 16, 2024 and again in June of 2024.

I filed a disciplinary complaint against both Kevin S. Brackett and Walter W. Thompson on June of 2024.

I filed Exhibit #24 Affidavit Motion for Default And Cause For Dismissal July 3, 2024.

I filed Exhibit #25 Affidavit Motion To Relieve Counsel And Vacate or Remand June 21, 2024.

Because in addition to the intentional-conspiring, complicit; wrongful behavior by the State in unlawfully determining and convicting me the circumstances in the Post Conviction Relief Proceedings; denied and deprived me my sixth amendment right to a speedy trial and it in fact damaged irreparably my defense in a ten year and four month delay by losing exculpatory witness (Val), Lawanda Hudson see; Exhibit A-2 Affidavit of Lawanda Val Hudson; Exhibit B-12 Obituary of Val Hudson dated July 2019.

I warned the State in 2013 in the initial PCR filing contained within the Exhibit #2 Memorandum of Law in support, filed December 9, 2013; in the <sup>Exh#10</sup> Return to Conditional Motion to Dismiss, filed May 2014; I filed a <sup>Exh#9</sup> Verified Complaint, for Writ of Mandamus, Prohibition Expedited Review filed January 2015 and I filed a <sup>Exh#7</sup> Notice Affidavit And Motion For Expedited PCR January 2016 all pro se filings warning the State of the ailing exculpatory witness. I even was granted permission to use the video conferencing system at the prison in Pennsylvania as Exhibit A ) to prevent further delay in this proceeding nonetheless it was delayed. I was represented by three previous attorneys prior to Ola A. Johnson until 2018-2019 within that time frame the State request continuances and those attorneys refused to raise the initial PCR claims filed and I was denied the opportunity to represent myself.

Even when represented ~~with~~ by Ola A. Johnson I requested to be relieved of assistance of counsel during this civil proceeding however, my request was denied. Due to the intentional damage with the lost of Val Hudson, see; state v. Hunsberger 418 S.C. 335, 794 S.E.2d 368 (2016) of Certiorari to the Court of Appeals, the Court held

(1) ten year delay between arrest and trial weighed heavily against State in Speedy trial analysis (2) reasons for delay weighed heavily against State; (3) defendant's assertion of speedy trial right was neutral factor; and (4) defendant was prejudiced and his speedy trial right was violated. In *Hansberger supra*, prejudice shown by discrepancies in the testimony of two of the three eye witnesses between their earlier statements or testimony at earlier proceedings") *Id.* stating: "on this record it appears the State's delay was not merely negligent but intentional"; quoting *Barker v. Wingo*, 407 U.S. 514 (1972) requiring the fair factor test).

I requested that a default motion be filed due to the intentional delay by the State however attorney Johnson and Attorney Shipe did not fulfill my request so the first opportunity I had once attorney Sarah E. Shipe filed Exhibit #23 Certiorari Writ filed June 2024. I filed Exhibit #24 Affidavit Motion For Default And Cause For Dismissal Rule 55 e) SCRCP Rule 55 (a) July 3, 2024 and I filed Exhibit #25 Affidavit and Motion To Revoke Counsel And Vacate or Remand For Default filed June 21, 2024 because both the state and the defense attorneys committed misconduct and did not

report misconduct, and the States delay was intentional, to damage the defense e.g., Val Hudson.

The clear Brady violation was the only evidence submitted into PCR evidence as States Exhibit 1. Note of Monday Bishop a request due to Discovery Motion Exhibit #2 pgs 56, 57 filed December 9, 2013. pursuant to; Brady v. Maryland 373 U.S. 83 (1963) held newly discovered evidence that had been suppressed by the prosecution should be granted a new trial.) no disciplinary complaint was filed against Kevin S. Brackett or ~~WALTER~~ W. Thompson, Solicitors of the case by neither Johnson or Shipe although this clearly violated Rule 3.8, Special Responsibilities of a Prosecutor.

The Prosecutor, Walter W. Thompson prosecuted and unlawfully indicted - directly indicted me; without probable cause in violation of 3.8. (a) and the failure to timely disclosure of evidence in violation of 3.8 (d) was not reported by trial attorney Kenneth D. Snow, or any of the attorneys leading to attorney Ola A. Johnson and Sarah E. Shipe.

Attorney, Wanda H. Carter filed a disciplinary complaint against Kenneth D. Snow for improperly filing a guilty plea, notice of appeal.

The Supreme Court appears to be ignoring my filings and doing so by keeping the attorney on the record and not allowing me to relieve the attorney or represent my self where my temporary restraining order is against the exact same attorney but my filing is rejected because I am represented by the attorney and I'm exposing habit, routine and practice pursuant to ~~Fed Rules~~ Fed Rules of Evidence 406. where "evidence of a persons habit or organizations routine practice may be admitted to prove that on a particular occasion the person or organizations acted in accordance with the habit or routine practice," and Exhibit P. A Letter from the South Carolina Supreme Court dated Oct 18, 2024 refers to October 15, 2024 filing reference to Exh. PA Injunction and Temporary Restraining Order.

The right to represent my self in the PCR proceeding had been denied And the R & R even stated that on pg (7.)

There is no right to counsel on Post Conviction Conviction Relief sees Pennsylvania v. Finely

I am being denied and deprived my right to file grievances to the

16 pg 14.

Court where the Court officers are aware of damages and injuries  
see, Lewis v. Casey,

The York County Clerk was served a Rule 55(e) motion Exhibit #  
24 Affidavit Motion For Default And Cause For Dismissal Rule 55(e) SCRP  
Rule 55(a) included with a Motion to Relieve Counsel filed July 3, 2024

The Clerk, Angie Bryant refuses to remove Attorney Ola A. Johnson  
from the record when he personally wrote her and told her he no longer  
represented me, and she did not file my motion to relieve counsel over  
a hundred and twenty day (120) days and she also refuses to enter the  
default against the state when the injury is obvious or otherwise the  
state violated 17-22-70; 80; S.C. code ann. 55(a); 55(e). The Kneec v. State,  
269 S.C. 177, 236 S.E. 2d 746 (1977) held the failure to file an  
answer to postconviction petition within extended time granted by  
court did not require granting of relief requested, absent showing of prejudice  
to petitioner from the delay; Stokes v. Stirling, 64 F.4th 131 (4th Cir 2023)  
held State forfeited Appellate argument citing Shinn v. Ramirez, 142 S.Ct.  
1718 (2022) citing 28 U.S.C. 2254 (e) (2) Therefore any argument the state  
raise regarding this appeal should not be permitted

The intentional ten year four month delay; irreparable damage e.g.,

lost Val Hudson as a witness; Sixth and Fourteenth Amendment violation;  
 e.g., 71.1 (a)(g); 17-27-10(20)(70)(80)(90)(100) S.C. Code Ann.; 243 SCRCP;  
 28 U.S.C.A. 2254 ( ) ( ) ( )

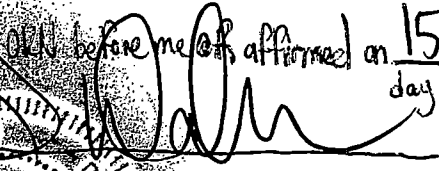
The State filed its Return dated November 4, 2024 and did not object or cite to the fact that evidence was knowingly submitted to the Supreme Court that was false in violation of Rule 3.3 regarding the Appendix containing over 1500 pgs when in fact the PCR transcript including the evidence submitted is 106 pgs this is clearly a habit, routine or practice that both the Appellate Defense and the Attorney General's office engage in or otherwise conspire together see; *Taver v. Glover supra*, *Shaffer supra*, *In Re spell supra*, *Lewis v. Casey supra*, *Barker v. Wingo supra*, *Exh P. B.*

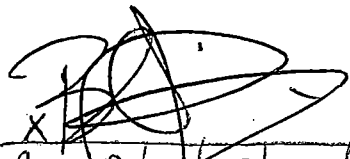
These actions and inactions and duty not discharged are in the interest of the public see; *Franks v. Ross*, 313 F.3d 184 (4th Cir 2002) on adequately asserted claims for injunctive relief against the DENR Defendant under *Ex parte Yang*, and the Court erred in dismissing these claims.

I am seeking remedy pursuant to 42 USCA Section 1983 against Johnson Shipe and Bryant in their individual and official capacity

I am applying the Younger, Harris, requesting the Federal Court to intervene with these federal law violations as well pursuant to the holding and circumstances of *Barker v. Wingo*, 407 U.S. 514 (1972) the *Tower v. Glaver*, 467 U.S. 914 (1984) the *Bush v. Munch* 659 F.2d 402 (4th Cir 1981) and *Kerr v. Finkbiner*, 757 F.2d 604 (4th Cir 1984) the *Main v. Thiboutot*, 448 U.S. 1 (1980) these are indeed in the interest of the public. see; *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 129 S.Ct. 365 (2008)

When I filed petition, petitions pursuant to S.C. Const Art V. Section 4 however, the Court failed to review the disciplinary complaints in Exh #25 and Exh #26. There is a need for a remedy from the Federal Court.

Subscribed before me and affirmed on 15 day of November month 2024  
  
Notary Public  
commission expires on, 34

  
Ben Robert Stewart 222006  
990 Wisacky Highway  
Bishopville S.C. 29010

dated 11/15/2024