

TO: Chief Justice Toal

RE: Appellate Case No. 2013-000083

Date: September 16, 2013

FROM: James I van Aiken #294853, Petitioner

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S.C. SUPREME COURT

On December 5, 2012, a PCR hearing was held in Charleston County on my behalf. The PCR Court denied relief and Appellate Defender La Nelle Cantley Durant was appointed to my case. I made a timely request instructing/informing Ms Durant, that there is a basis in law and fact that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law regarding the issue of the prior conviction element in Burglary first cases, which was raised to and ruled upon by the PCR Court.

July 2013, she filed a Writ of Certiorari to this Court appealing the PCR Court's decision, wherein she refused to present the issues to this Court. See Rule 407, SCACR, Rules of Professional Conduct, 3.1. Meritorious Claims and Contentions.

The issue of the prior conviction element was the *ceux* of my trial/conviction. Durant's refusal to present the issues to this Court, under the exhaustion rule, has rendered the omitted issues procedurally barred from federal habeas review.

The PCR Court relying on State v Hamilton; State v. Benson denied relief. The facts of my case are ~~not~~ materially distinguishable. Moreover, it is necessary under the evolving standards of decency, that this Court re-evaluate the issue for consideration in light of the unique facts and circumstances surrounding my case.

I request this Court grant 45 days so that I may present a good faith argument, pro se, to exhaust state remedies of the omitted issues to preclude procedural bar from federal habeas review.

cc

Robert M. Dudek
Chief Appellate Defender

La Nette Cantey Durant
Appellate Defender

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