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S.C. SUPREME COURT

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO CHARLESTON COUNTY
The Honorable Roger Young, Circuit Court Judge

Appellate Case No. 2024-000601

Terrell McCoy, # 256010 ..... Petitioner

State of South Carolina ..... Respondent

Repy ~~to~~ Return to Petition for Writ of Certiorari

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1. Rule 60(B)(5), SCRCP

In this case, Petitioner has pursed his appeal, and filed a petition for Rehearing which were all denied. See: Terrell McCoy V. State of South Carolina Appellate case No. 2017-000755

The South Carolina Supreme Court has previously vacated Judgment. The Amended order of dismissal dated June 19, 2019, does not remedy the Supreme Court's mandate to issue a legal sufficient order which Comply with the law.

See: February 01, 2019 Supreme Court order, and June 19, 2019 Amended order of dismissal. Lower Court case No. 2013-CP-10-1994; Appellate Case No 2017-000755.

Petitioner filed a timely notice of appeal, which was denied May of 2022. The Respondents incorrectly argue that Petitioner's Rule 60(b) was not filed in a reasonable time." Justus V. Clarke 78 F 4th 971, 16 Fed. R. Serv. 3d (2023) Holland V. Florida, 560 U.S. 631, 649, 130 S.Ct. 2549, 177 L.Ed. 2d 130 (2010) (The language of Rule 60(B) implies that under certain Circumstances, a reasonable time can extend beyond one year. Courts interpreting this rule have held "the reasonable-time" limit is discretionary and should be determined under the facts and circumstances of each case.

See: Hous. found V. Smith, 380 S.C. 621 & 639, 670 S.E. 2d 680, 690

To establish grounds for equitable tolling, a petitioner must show (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way and prevented timely filing. Rouse v. Lee 339 f.3d 238. 246 4th Cir. (2003)

Tench v. S.C Dept of Educ. 347 S.C. 117, 121, 553 S.E. 2d 451, 453 (2001) In Tench, when the Department failed to petition the court of appeals for rehearing, it effectively abandoned its right to relitigate under Rule 60 (B) (5), the issues raised in that appeal.

Brazzell v. Haley 2020 WL 5688870 (2020) (same)

See MCDaniel v. U.S. Fidelty & Guar. Co 324, S.C. 634, 478 S.E. 2d 868 (1996) (Proffered argument as to why four-year delay is reasonable in this case)

In my case, the PCR court filed the amended order June 14, 2019. I filed a timely 59 (e) motion, and then filed a timely appeal. On May 18, 2022, the South Carolina Court of appeals affirmed. On June of 2022, I filed a Rule 60 (B) motions to set aside Judgment

The circuit Judge abuse its discretion in denying the Rule 60 (B). The order was drafted by Respondent in violation of Rule 52 (a) SCRCP, and also the Order does not comply with the laws. Tri-County Ice & Fuel v. Palmetto Co. 303 S.C. 237, 395 S.E. 2d 779 (1990)

The Respondent defense of timeliness is without evidentiary support. Hagy v. Pruitt, 339 S.C. 425, 529 S.E. 2d 714 (2000) (Court has inherent authority to set aside Judgment on the grounds of extrinsic fraud in spite of any facially applicable statute limitation. Chewning v. Ford Motor. 354 S.C. 72, 86, 579 S.E. 2d 605, 612 (2003) See Full argument page 3 Also see: Wold v. Funderburg 250 S.C. 205, 157 S.E. 2d 180 (1967)

2. Proceeding

The Respondent incorrectly states a criminal trial is not a proceeding defined in Rule 60 (B), SCRCP. The rule clearly states: A party can seek relief from any final Judgment, order, or proceeding was entered or taken.

In Construing a statute, this Court must give prime consideration to the intention of the legislature. Citizens and Southern Systems, Inc v. South Carolina Tax Commission, 280 S.C. 138, 311 S.E. 2d 717 (1984) Detyen v. E Maguire, Inc, 284 S.C. 198, 324 S.E. 2d 648 (Ct. App. (1984)

Blacks Law Dictionary (12th Ed. 2024 Proceeding may include ... (7) the trial

3. Rule 60(B)(3) Clear & Convincing evidence (Extrinsic fraud)
Arnold v. Arnold, 285 S.C. 296, 328 S.E. 2d 924 (Ct App. 1985)
(when a party asserts ground for relief because of fraud, misrepresentation, or other misconduct of an adverse party under Rule 60 (b)(3), SCRCP, the movant must prove his/her entitlement by clear and convincing evidence). Chewning v. Ford Motor Co. 354 S.C. 72, 86, 579 S.E. 2d 605 (2003)

Such evidence is usually provided through Affidavits. See 49 C.J.S. Judgment § 295, at 544 (1947) ("A motion to open or vacate a Judgment should be supported by affidavits as to the facts on which the application relies. C.f. Arnold v. Arnold, Compton V. Alton Steamship Co. 608 F. 2d 96, 102 (4th Cir 1979)

See Affidavit of Kriston Neely date December 11, 2015 (1)
August 13, 2013 Letter of Beth Woodall (2)
February 2, 2009 trial transcript
December 14, 2015 PCR hearing transcript

1. Petitioner has Submitted affidavit of Kriston Neely which show the State Concealed the 911 tape and 911 caller's name. Clear and convincing evidence

2. Mr. Burns wetmore and Peter McCoy are officers of the Court, and acted as Solicitors in my criminal trial

3.) Mr. Burns wetmore misrepresentation and misconduct are shown in Feb. 2. 2009 trial transcript pages 47 thru 80. Mr. Burn purposedly lied to the Court that all evidence was disclose to me or my public Defender. See Feb. 2. 2009 transcript pages 631 thru 636 line 1-6. Compare to Affidavit of Kriston Neely and Letter of Beth Woodall in Record on Appeal.

4.) Mrs Lorelle Proctor is an officer of the Court. Mrs. Proctor representation that she Subpoena the wrong Jenie Fowler, and that there were two Jenie Fowler were false. See Letter of Beth Woodall

5) Solicitor Peter McCoy Suban perjury through Detective Angela Bunker that State's Exhibit 18, 19, 20 (which were identified as Exhibit 18 Blood smears on wall; Exhibit 19 blood on door Knob, Exhibit 20 Blood on curtain) were not related to the homicide in the living room to hide evidence that Someone left blood on the bedroom door Jamb, walls and curtains. The Police never collected evidence, nor did the police send the blood to Sled for testing.

All acts of misconduct, misrepresentation and Subornation of Perjury by officers of the Court constitutes Extrinsic Fraud Hazel-Atlas Glass Co. v. Hartford Empire Co. 322 U.S. 238 64 S.Ct. 997 88 L.Ed. 1250, Chewning v. Ford Motor Co 354 S.C. 72, 579 S.E. 2d 605

Respondent is incorrect that Mr. Wetmore's admission that "he nor his office Subpoena the 911 tape" does not show a prima facie of "extrinsic fraud."
This is error of facts. Rule 60(B)(1)
When applying law to the facts of the case, Mr. Wetmore's admission constitutes extrinsic fraud under Chewning. Mr. Wetmore was served a motion of discovery on April 10, 2006. See Record on Appeal, March 30, 2006 motion of discovery. See U.S. v. Valenzuela Bernal 458 U.S. 858, 102 S.Ct. 3440 73 LEd 2d 1193

The 911 tape and 911 caller's name was concealed to cover up the fact that someone called 911 and reported the crime happen totally different from the State's main witness. The 911 tape was relevant and material.
See Navarette v. California 572 U.S. 393, 134 S.Ct. 1683, 1689-90, 188 L.Ed. 2d 680 (2014)(Concluding that an anonymous 911 caller "bore adequate indicia of reliability for the officer to credit the caller's account" in large part because, like here, the caller "claimed eye witness knowledge of the alleged [conduct] and the call was a contemporaneous report" that was made under the stress of excitement caused by a startling event)

The concealment of the 911 tape & 911 caller prevented Petitioner from fully presenting his case. Universal Film Exchange, Inc v. Lust 479 f. 2d 573, 576 (4th Cir. 1973)

Petitioner's defense is he did not commit the crime, and that someone other than the State's main witness, witness the murder and reported the crime. The state main witness credibility was undermine where the record reveals She lied to police on multiple occassion. See Record on Appeal February 2, 2009 trial transcript pages 188 line 1-25 through 189 line 1-25 and 190 line 1-4

The Solicitor Peter McCoy suborn perjury through Angela Bunker that the blood on the walls, door jamb, and curtain to cover up what the State witness said in her first statement to police. See Record on Appeal Cerenda Snowden March 25, 2006 "Sworn Statement,"

Mrs. Snowden gave (3) three statements to police. During the Suppression hearing, she allege she lied in the first statement. Trial transcript page 104 line 23-25.

In the first statement, Ms. Snowden clearly ~~she~~ stated she touch the victim, and then ran into her bedroom, open the window then stop, after she heard a loud kick at her front door, and the door flew open.

The uncollected, and untested DNA found on the bedroom door knob, walls, curtain, and bedroom window matches the first statement.

Ms. Bunker committed perjury by testifying the blood on each item was not related to the murder in the living room. See: Record on Appeal february 2, 2009 T.T. Page 341 line 22-25 through pages 343 line 1-17 Compare to Mrs. Snowdens first statement See Also pages 389 line 16-24

The door frame kick open match the description given by the conceal 911 caller, and these items were concealed in a scheme to defraud the Court

and win an Conviction. Mrs Snowden then testified she lied when she gave the first statement but the physical evidence match the details of the first statement.

The Subornation of perjury by an attorney and/or intentional concealment of documents by an attorney are actions which constitute extrinsic fraud. Contrary to perjury by a witness or a party's failure to disclose requested materials, Conduct which Constitutes instrinsic fraud, where an attorney - an officer of the Court - suborn perJury or intentionally Conceals document, he or she effectively precludes the opposing party from having his day in Court. Those actions by an attorney Constitutes extrinsic fraud. See: In The Matter of Goodwin, 279 S.C. 274, 305 S.E.2d 578 (1983) (Attorney has an ethical duty not to perpetrate fraud upon the Court by Knowingly presently perjured testimony). See Banker's Trust Co. v. Bratten, 317 S.C. 547, 455 S.E.2d 199 (Ct App. 1995)

The 911 tape, 911 Caller, and DNA were all material under Clearly established federal law Criminal Cases. Brady v. Maryland (materiality requirement)

Evidence in the possession of police are imputed to the state. The State Concealed the evidence. Chewning v. Ford Motor

Ray v. Ray, Id. which the Court held, that an act of perjury or Concealment of document coupled with an intentional Scheme to defraud Justifies the Setting aside Judgment pursuant to the Rule 60 (B) due to extrinsic fraud. 374 S.C. at 86. 641 S.E.2d at 241. The Respondent incorrectly States Petitioner never Sought to Introduce the CAD report into evidence at trial. See Respondent Return page 17. The State objected to the admission of CAD Dispatcher report on grounds of not Knowing who made the 911 call. See Recordon Appeal. February 2, 2009 trial transcript page 631-636

This misrepresentation, and misconduct prevented Petitioner from having his day in Court. Under Navarette v. California, the 911 dispatcher would have known who made the 911 call. Ms. Proctor failed to subpoena the 911 dispatcher after being directed by Judge Denis, See Record on Appeal, January 27, 2009, ~~Tue~~ transcript page 29, Preventing Petitioner from having material witness.

Her misrepresentation that it was two Jenie fowlers is discredited by Letter of Beth Woodall. This misrepresentation prevented petitioner from fully exhibiting his case. The Respondent's defense of Resjudicata should be denied.

4. June 14, 2019 order of Dismissal void / RULE 60 B(1)(4)

Per Judgment is void where Petitioner was denied an evidentiary hearing, under procedural due process 17-27-70(4) 17-27-80, Butler v. State, 286 S.C. 441, 345 S.E.2d 813 (1985); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989), on his IAOC claims against public defender.

During the evidentiary hearing held on December 14, 2015, PCR counsel called Lorelle Proctor as a witness and the State objected. The PCR Judge abuse its discretion by not allowing Ms Proctors' testimony.

See: December 14, 2015 PCR hearing transcript pages 4-9.

In the June 14, 2019 order of dismissal, the PCR Judge erroneously determined Petitioner did not call Mrs. Proctor as a witness, eliminating the Court's assessment of IAOC claims. See PCR Judges Amended Order IAOC claims.

This is without evidentiary support.

The PCR Court wrongfully concluded Petitioner voluntary waived Ms. Proctor as a witness. The PCR Court then missapplied the law.

The Respondent cites Universal Benefits Inc v. McKinney

In Universal, the employer failed to appear at a Pretrial conference and roster meeting. The Court of appeals held the requirement of of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review. See Grannis v. Orden, 234 U.S. 385, 394, 34 S.Ct. 779, 58 L.Ed. 1363 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard)." S.C. Dept. of Soc. Serv. v. Holden 319 S.C. 72 78, 459 S.E.2d. 846, 849 (1995)

Respondent incorrectly states, Petitioner did not raise this arguments pertaining to the Judgment is void under Rule 60 (4), SCRCP. See Respondents Return page 20.

Petitioner filed a Rule 15(b) Rule 60 (b) on January 26, 2023, and October 10, 2023 raising failure to hold an evidentiary hearing on the IAOC claims, and other motions labeled Rule 60 (B) (1)(2)(3)(4)(5)

Petitioner was entitled to a hearing. Honorable Judge Markley Dennis ordered Mrs. Proctor to complete Compulsory process and obtain witnesses. Its evidente Mrs. Proctor had failed to Subpoena Jenic Fowler, the 911 Caller, and Terence Prizzie. See also Rule 29 SCRCrimP and Rule 59 (B) motions.

Mrs. Proctor and the State was fully aware of Petitioners alibi defense, as Petitioner gave an alibi statement to detective Thomas Deckard. See February 2, 2009 trial transcript page 83 line 22-25

See affidavit of Terence Prizzie.

Petitioner was indigent, and the Court ordered Mrs. Proctor to Subpoena witnesses. Moreover, In Faretta v. California, 422 U.S., at 819, 95 S.Ct., at 2533, the the Court recognized that the Sixth Amendment grants to the accused personthe right to make his defense. It is the accused, not Counsel, who must be informed of the nature and cause of the accusation who must be 'confron-

ted with the witnesses against him 'and who must be accorded 'compulsory process for obtaining witnesses in his favor." (Emphasis added).

Pursuant to Rule 60(B)(1), the PCR Court order of dismissal does not comply with law. See Kemp v. United States --us---142 S.Ct. 1856, 213 L.Ed.2d 90 (2022) See In Re Treatment and Care of Luckabaugh 351 S.C 122 568 S.E.2d 333, 52 (a) The PCR Judge misapplied Controlling law under Strickland v. Washington It is clearly established federal law, that error of law or error of fact falls within the Rule 60 (B)(1). See Justus v. Clacke Misapplying controlling law to record facts 142 S.Ct. at 1862 ên.2 Id

See Johnson v. Zerbst supra 304 U.S. at 465, 58 S.Ct. at 1023 McKaskle v. Wiggins 465 U.S 168, 183, 104 S.Ct. 944, 94 L.Ed. 2d 122 (1984); United States v. Windsor 981 f.2d 943, 947 (9th Cir. 1992) United States v. Taglia 922 f.2d 413, 418 (7th Cir.)(when the only record on which a claim of IAOC is based is the trial record)

See: State v. Human, 276 S.C. 559, 281 S.E.2d 209 (1981). State v. Williams 266 S.C. 325, 223 S.E.2d 38 (1976)(Supreme Court will not consider IAOC claims on appeal)

McHam v. State, 404 S.C 465. 475; 746 S.E.2d 41, 47 (2013) ([I]n issue that was raised on direct appeal but failed to be unpreserved May be raised in the context of a PCR claim alleging IAOC. abrogated on other grounds by Smalls v. State, 422 S.C. 174, 18 n.2 810 S.E.2d 836, 839 n.2 (2018)

The record reveals a hearing was necessary, where the Judge ordered Mrs. Proctor to Subpoena Witness;... Mrs. Proctors misrepresentation that it was thwo Jenie Fowler, and she subpoena the wrong person, prevented Petitioner from presenting his case under Crawford v. Washington 541 U.S. 36, 53-54 124 S.Ct. 1354, 158 L.Ed.2d 177; Washington v. Texas, 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed. 2d 1019 (1967) U.S. v. Valenzuela Bernal 458 U.S 858, 102 S.Ct. 3440, 73 L.E.2d 1193 (1982)(The materiality requirement under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 10 L.Ed. 215 (1963) Moore v. Illinois, 408 U.S. 786, 92 S. Ct. 2562, 33 L.Ed. 2d 706 (1972)

The PCR Court found Counsel's assistance was effective. This is without evidentiary support, and the Circuit Court abuse its discretion in denying Petitioner's Rule 60 (B)(1) motion.

Lastly, The Respondents are incorrect that Petitioner did not make prima-facie showing of Newly discovered evidence by affidavit of Terence Prizzie. This evidence was not presented during trial due to trial counsel's failure to subpoena him. Mrs. Proctor as well as the State was fully aware of Petitioner's alibi defense as Petitioner gave an alibi Statement to police. See Record on Appeal February 2, 2009 T.T page 83 line 22-25

Petitioner was unable to present the Statement of Terence Prizzie during PCR hearing, due to State's objections of IAOC claims involving Mrs.

Proctor.

Terence Prizzie states Petitioner was in Blakley Georgia during the morning the victim was killed on March 25, 2006.

The Circuit Court abused its discretion in denying the Rule 29 SCRCrimP motion, and 59(b) motion.

See: Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983)

The affidavit of Terence Prizzie would probably changed the result if a new trial was had, has been discovered since the trial, (3) could not by the exercise of due diligence been discovered before trial due to IAOC. Ms Proctor failed to investigate and subpoena Terence Prizzie. Petitioner was indigent, and need the assistance to subpoena an out of State witness. The affidavit is material to the issue of innocence, and is not merely cumulative or impeaching. Faretta, 422 U.S at 819, 95 S.Ct. at 2533.

Had the State not conceal the 911 tape, 911 caller, DNA, and had not misrepresentation concerning Subpoena for material evidence, Petitioner would have been able to present his defense fairly.

A defect in the integrity of the PCR and criminal trial exist. See Arata v. Village west Owners' Ass'n, Inc 2011 WL 11735004

"In Arata, Aratas allege Regime's attorney "had concealed a box of record, and further maintain the attorney, [b]oth in the prosecution of the case in the lower court an on appeal in the Court of appeals," made representations that were false material, known to have been false." The Court found Acatas' complaint allege extrinsic fraud not barred by resJudicata. The Court also found, the motion filed well beyond the one-year time required under Rule 60(B)(1)-(3) warranted equitable relief.

Village West Horizontal Property Regime v. Arata, Op No. 2007-UP-015 (S.C. Ct App. filed Jan. 11, 2007)

The State's argument that the criminal trial proceeding does not fall within the Rule 60(B) is Just an attempt to further defraud the Court. See Russell v. State 2012 WL 5356356 (In Russell v. State, the State filed a Rule 60 B1 motion). An meritorious claim exist, and the State is not prejudice, and Petitioner is entitled to equitable relief. Mangal v. State, 421 S.C. 85, 92, 805 S.E.2d 568, 571 (2017), Hendricks v. State, 387 S.C. 281, 692 S.E.2d 892 2010

Also, the PCR Judgment is mistake under Rule 60(B) error of law and fact. See Gibson v. State, 334 S.C. 515, 514 S.E.2d 320, (When

a defendant lacks knowledge of material evidence in a prosecution's possession, the waiver of constitutional rights cannot be deemed knowing and voluntary)

1.) Petitioner was coerce and mistreatment under Garder V. State, 351 S.C. at 412-13, 570 S.E.2d at 186-87, and the court failed to make a searching inquiry on the record. Aiken V. United States 296 f. 2d 604. 607 (4th Cir. 1961) (the judge should develop the record the educational background, age, and general capabilities of an accused, so that the ability of an accused to grasp, understand and decide is fully known " to the trial court and fully disclosed on the record) Townes V. United States. 371 f. 2d. 936, 934 (4th Cir. 1966)

At the start of the waiver hearing, Public Defender Lorelle Proctor told the Judge Petitioner has one small motion to compel. See January 27, 2009 waiver hearing page 4 line 8-10. This is indication there was a problem with disclosure.

Petitioner then complained how trial did not protect his speedy trial rights. The Judge kept interrupting Petitioner as he tried to explain police had failed to collect DNA that was left at the crime scene. The Judge incorrectly ruled the evidence did not exist. The DNA did exist, and Counsel had failed to investigate rendering her performance deficient under the first prong of Strickland. This is error of facts & Law. See Waiver hearing pages 10 line 8-25, page 11 line 1-25, page 12 line 1-12, and page 27 line 1-13.

The PCR had misapplied Strickland v. Washington, Williams V. Taylor.

The record reveal Petitioner was deprived of material evidence, and in the three years representation, Counsel did not obtain the 911 tape, nor the name of the 911 caller. This is not speculative but support by clear and convincing evidence. See Affidavit of Kriston D. Weeks.

The State presented State's Exhibit # 18 identified by Angela Bunker as blood smears on bedroom door knob, State's Exhibit 19 identified as blood on the walls and State's Exhibit 20 as DNA on the curtain.

As stated above Mrs. Bunker testified that the DNA was not related to to the homicide in the living room. The DNA was never collected by police nor sent to Sled for testing. Mrs. Proctor had not investigate the DNA, the 3 years of her representation. This also prove Mrs. Bunker committed perjury.

See february 2, 2009 trial transcript pages 341 line 22-25, 342 line 1-25 343 line 1-17, 360 line 14-25, 361 line 1-16, 389 line 16-24, 390 line 2-18, page 391 line 3-25, page 420 line 1-13, page 425 line 14-25

1. Petitioner has filed a PCR DNA application on December 14, 2023. The State has not filed a return. See DNA application attached to this Petition

See trial transcript page 4 line 6, State's Exhibit 27 Diagram of crime scene introduce during trial, page 137, attached to this petition
See also Defendant's Exhibit 44 and 45. February 2. 2009 trial transcript pages 523 line 9-25, page 524 line 1-20, page 525 line 1-25, Page 528 line 1-25.
Mrs. Proctor also failed to investigate Defendant's Exhibit 44 and 45 identified by Chief Coroner Rae Wooten as blood on an open window in the bedroom. Neither evidence was collected, nor sent to sled for testing.

This Court has overlooked these facts, and clear error of law and error of Facts exist. Williams V. Taylor, Faretta, Id at 422 U.S. 89, 95 S.Ct. 2553, and Strickland V. Washington

The State purposely lied that all evidence was disclosed. See trial transcript page 47 line 11-25, page 48, 49, 50, page 51 line 2-25, page 52 line 1-11 and 77 & 78.

The State waited until it rested its case, and Petitioner began calling his witness, to admit the evidence was never subpoena. Trial transcript page 631-636.

Petitioner was unable to fully present his defense, and the right to compulsory to witnesses under faretta, Id at 422 U.S 819, 95 S.Ct. 2553 Fifth Amdt. U.S Const. The 911 Caller's name, suppress, was material to impeach Cerend a Snowden testimony. When the police destroyed the 911 tape, they suppress the 911 Caller's name that only Jenie Fowler would have known under clearly established federal law Naverette V. California, 572 U.S. 393. 134 SCt 1683.
The DNA suppress, nor collected, was material to impeach Angela Bunker testimony.

See thorough on going investigation under Powell V. Alabamba, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932) (The Supreme Court has unequivocally stated, the pretrial period is perhaps the most critical period of the proceeding ... when consultation, thorough ongoing investigation and preparation are I vitally important "to a.d defendants). Id. 287 U.S 45 57 77 L.Ed 158 (1932). But see Rule 60(B)(3).

Petitioner preserved these rights. The State misconduct, misrepresentation and Subornation of perjury is Extrinsic fraud under Chewning V. Ford Motor Co, Id

Even in federal Court, a petitioner can move under Rule 60 (B) to set aside Judgment, if there is an defect in the integrity of the habeas proceeding under Gonzalez V. Crosby 545 U.S. 524 125 S.Ct. 2641 162 L.Ed. 2d 480 (2005)

19 years have pass, and the state continously concealed the name of the 911 caller. The evidence in the trial record prove this because the State objected to the admission of the March 25, 2006 CAD Dispatcher's report alleging they did not know who made the 911 call. Trial transcript pages 633 line 20-25, page 635 line 2-17. The Caller's name was suppress with the 911 tape.

Jenie Fowler, the 911 dispatcher would have known the name of the 911 caller and what resident made the call. See Naverette V. California 572 U.S. 393 134 S.Ct. 1683 (2014) State v. Steadman 216, SC 579, 59 S.E.2d 168 (1950) State v. Smith 309 S.C 396 415 S.E.2d 409 (1992) "All relevant evidence is admissible Rule 402 SCRE State V. Davis-Kocsis 443 S.C. 127, 903 SE.2d 491

This constitutes a meritorious defense. The State waive any defense on Meritorious defense. It was neither Stated in the Return. Sheally V. Doe 376 S.C. 194, 205 Co, 634 S.E.2d 45, 51 Ct. App. 2006) Therefore the relevant evidence was excluded at trial. Petitioner had preserved this claim. The PCR Court Order of dismissal should be vacated under Rule 60(B)(1) error of law and error of facts.

For these reason Stated and facts supporting the arguments. the Circuit Court abused its discretion denying Petitioner's Rule 60(b)(1)(2)(3)(4)(5), the PCR Judge Order of dismissal is void, as the court failed to Provide proper due process to be heard on the IAOC claims. where Petitioner has Shown through evidence, that the Judge ordered Public defender to Subpoena witnessess, and she committed Misrepresentation Concerning the compulsory process, and the State misconduct in concealing the 911 caller's name, and intntionally destroying relevant material evidence which could have been used in Petitioner's defense. coupled with subornation of perjury constitutes extrinsic fraud. Supported by Affidavit of Kristan D. Neely

The PCR Judge Amended Order is mistake error of law and error of facts which requires setting aside the Judgment base on IAOC claims where counsel failed to subpoena material witness and alibi witness where the record show Petitioner gave an alibi statement to Det. Deckard that the State and Mrs. Proctor was awaire of.

3-24-25

/s/ Jinell Neely

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