

Daniel E. Shearouse, Clerk of Court
So. Car. Supreme Court
Post Office Box 11330
Columbia, S.C. 29211

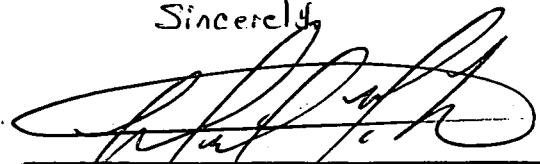
October 7th, 2013

Re: Herbert McDowell v. State, Case No. 2013-001977

Dear Mr. Shearouse,

Enclosed is the Explanation for Review under Rule 243 (c) to be filed in your Office. Thank you in advance for your devoted assistance, I am,

Sincerely,



Herbert McDowell #145167
Herber Corr. Inst.
Post Office Box 205
Ridgeville, S.C. 29772

cc:

Joshua L. Thomas, Esq.

RECEIVED

OCT 10 2013

S.C. SUPREME COURT

State of South Carolina
County of Florence

Herbert M. Dowell # 145167,
Applicant,

vs.

State of South Carolina,
Respondent.

In The Supreme Court

Case No. 2013-001977

Applicant Explanation For Review
Under Rule 243(c) **RECEIVED**

OCT 10 2013

S.C. SUPREME COURT

The Applicant Herbert M. Dowell is presently confined at the
Inst. in the South Carolina Department of Corrections, Pursuant to order of confinement
from the Florence County Clerk of Court.

The Procedural history submitted by the Respondent, is in part true and
some omitted. The Applicant will in part submit a brief procedural history of the
omitted history of this case, that as a result brought about this Post Conviction Application.

The Applicant is presently confined in the So. Car. Dept. of Corr. The Application
was indicted at the April 1988 term of the Florence County Grand Jury for murder and
Assault and Battery with Intent to Kill (1988-BS-21-442) Ernest B. Hinnant, Esq. and
Charles M. Luther, Esq. represented him on the charges. On October 28, 1988 Applicant was
found guilty as charged. The Honorable Sidney T. Floyd sentenced the Applicant to life
on the afore-said offenses.

A timely Notice of Appeal was filed on Applicant's behalf and Joseph L.
Savitz III Esq. of the So. Car. Office of Appellate Defense perfected the appeal. The S.C. Supreme
Court affirmed the conviction Pursuant to Rule 23 of the SC Rules of Court, State v. M.S. Dowell,
DP-MD-287 (November 20, 1990).

The Applicant thereafter filed a Application for Post Conviction. In this
initial PCR Applicant's PCR Counsel failed to raise all available grounds for relief as required
Pursuant to Rule 71.1(d) of the SCRCiv. P., and S.C. Code of Laws 17-27-90.

In this current PCR Application before this Court the Applicant alleges
that he is being held in custody unlawfully for the reason set forth in the Application before
this Court, with the record duly noted the Applicant will show this Court an explanation
why the Lower Court determination was improper.

This Court has held in Washington v. State, 478 S.E. 2d 833 (1996), that Washington, supra. PCR was not procedurally barred from receiving a new trial even though application may have been successive given many procedural irregularities that occurred during the course of Petitioner's Judicial Process that deprived him of due process. The Court went on to highlight the sole issue in Aice v. State, 409 S.E. 2d 392 (1991) with the rarest of exceptions to overcome a procedural default.

(1.) The question Applicant puts before this Court now is whether or not within the context of this state procedural framework that Counsel's ineffectiveness in an initial-review collateral proceeding qualifies as cause for procedural default?

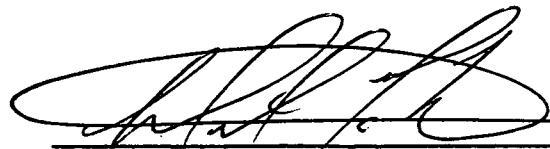
See S.C. Code of Law 17-27-90 These Rules of Court and Statutory Laws are applied mandatorily, without Counsel the issue Applicant raised in his successive application can not be raised. Foster v. State, 379 S.E. 2d 907 (1989) does not allow hybrid representation.

Further, Rule 71.1 et seq. SCRCiv.P., requires that Counsel be appointed to represent Applicant in his initial PCR; Counsel shall be given a reasonable time to confer with Applicant; Counsel shall insure that all available grounds for relief are included in the initial PCR.

Martinez v. Ryan, 132 S.Ct. 1309 (2012) only establish the rule when a prisoner may establish cause to excuse a procedural default. From this, it follows that, when a state requires a prisoner to raise an ineffective assistance of trial Counsel claim in his initial collateral proceeding, a prisoner may establish cause for a default of an ineffective assistance claim in two circumstances. The first is where the state courts did not appoint Counsel in the initial review collateral proceeding claim of ineffective assistance at trial. The second is where appointed Counsel in the initial review collateral proceeding, where the claim should have been raised, was ineffective under that standards of Strickland v. Washington, 104 S.Ct. 2052 (1984) See also, S.C. Code of Law 17-27-90 and Rule 71.1(d) SCRCiv.P.

Conclusion

The Lower Court determination was improper, in that, it was not based on facts raised in the application. Therefore for the foregoing facts and reason the Court should allow this case on appeal.



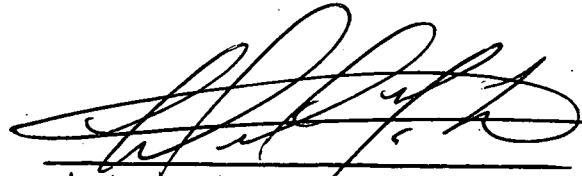
Herbert M. S. Dowell # 145167

October 7th, 2013

Ridgeway, So. Car.

Certificate of Service

I, Herbert McDowell, do hereby certify that I have served a copy of the Explanation for Review, by depositing in the U.S. mail First Class addressed to the below parties in this action on October 7th, 2013



Herbert McDowell #145167
Lieber Corr. Inst.
Post Office Box 205
Ridgeville, S.C. 29472

Daniel E. Shearouse, Clerk of Court
So. Car. Supreme Court
Post Office Box 11330
Columbia, S.C. 29211

Joshua L. Thomas, Esq.
S.C. Attorney General's Office
Post Office Box 11549
Columbia, S.C. 29211-1549

Herbert M. Powell #145167
Lieber Corr. Inst. AB 36
Post Office Box 205
Ridgeville, S. C. 29472

RECEIVED

OCT 08 2013

MAIL ROOM
REFR C

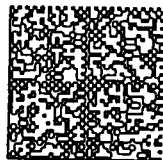
SCDC

FOR LEGAL USE ONLY

MAIL ROOM

2921181930

FIRST CLASS



02 1M \$ 00.46⁰
0004238017 OCT 08 2013
MAILED FROM ZIP CODE 29472

Daniel E. Shearouse, Clerk of Court
So. Car. Supreme Court
Post Office Box 11330
Columbia, S. C. 29211

