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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

David Farrell Sullivan,

Petitioner,

V.

The State of South Carolina,

Respondent.

Appeal From Spartanburg County

John C. Few , Trial Judge

J. Durham Cole , Post-Conviction Judge

Opinion No. 25923

Petitioner David Farrell Sullivan, Pro se

D Russell Barlow II Office of The Attorney General

PCR Division 7th Circuit P.O.Box 11549 Columbia S.C. 29211

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ISSUES

Does *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991) apply when a Post-Conviction Relief Applicant did not knowingly and intelligently waive appellate review and his PCR counsel did not file an appeal of the decision of the PCR Court to dismiss with prejudice?

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Does the Statute of Limitations for Post-Conviction Relief applications S.C. Code Ann 17-27-45(A) apply to applications filed pursuant to *Austin v. State*?

Did the trial court have subject matter jurisdiction to convict the petitioner from the 2003 Act No.92 for crime that was said to have been committed in March 2001 when the new act redefined the law to increase the punishment?

Did the withholding of exculpatory evidence by the prosecution material to guilt punishment or the credibility of the prosecution's victim violate *Brady v. Maryland*, 373 U.S. 83-87 88 S.Ct. 1194 10 L.Ed. 2d 215 (1963)?

Was trial counsel ineffective for not challenging the charging document alleging "Assault and Battery" or in the alternative a Jury charge based on the law in 2002 when the crime was said to have been committed.?

STATEMENT OF THE CASE

Petitioner in his writ is attacking the PCR procedure used in his case and not the merits of his case as well as his claim that he did not knowingly or intelligently waive appellate review and the right to appeal which was a procedural error preventing Petitioner his fair "bite" at the apple because of abandonment of PCR counsel Franklin Milton Mann Jr failure to file an appeal or maintain any contact whatsoever after a timely file PCR application and hearing. Moreover petitioner was denied effective assistance of counsel in the trial that convicted petitioner on a prospective law S.C. Code Ann 16-25-65(A) (Supp.2003) on the newly redefined law and Criminal Domestic Violence Act for a charge lodged against the Petitioner in March 2001. (See Index Exhibit initial arrest warrant and charging documents) It is clear from the record .Additionally see the improvident seizure and false arrest and pretrial detention that trial counsel failed to litigate to the jury for credibility or cross examination purposes. In the first instance it was ineffective assistance on PCR counsel and also ineffective assistance on trial counsel failure to litigate the subject matter jurisdiction of the court to try and convict Petitioner.

PROCEDURAL HISTORY

In March, 2001 petitioner and his wife Cathy were living in Spartanburg County and Petitioner was employed as a salesman at Joe Gibson's Auto Sales on W. Main Street living with his sales Manager and his wife at 480 Randall Drive. Petitioner's wife lodged a complaint of criminal domestic violence on or around March 4, 2001 (See Index Exhibit original arrest warrant). Petitioner was arrested on March 4, 2001 and bonded out with a local bonding company for \$2000 the same day. Petitioner and his wife separated for approximately three weeks and petitioner leased a house for her as she had been living with her daughter. Petitioner leased a house at 214 Hill Street and resumed living with his wife. In January 2002 the prosecuting attorney issued a letter advising that the case would be dismissed for failure of the victim to cooperate. On June 10, 2002 Petitioner was informed by Senior criminal investigator at the District Attorney's Office with a Summons to appear on June 14, 2002 for violation of the bond agreement. Petitioner was seized in his residence on June 13, 2002 and falsely detained in confinement until the rescinding of the warrant by Judge Donald Beatty on September 13, 2002.

Petitioner went to trial in October 2002 and a mistrial was granted after a jury was sworn but before the case was submitted to the jury without objection by trial counsel for improvidently declaration of the mistrial. Petitioner was remanded back to jail and went to trial again on November 22, 2002 and sentenced to ten years in jail. Petitioner filed a timely PCR application clocked February 14, 2006 and had a evidentiary hearing in the December term of 2006. Petitioner filed several pro se Motions subsequent to the hearing because of abandonment by his PCR counsel.

ARGUMENT

A PCR applicant is entitled to an *Austin v. State*, 305 S.C. 453,409 Judge affirmatively finds either (1) the appellant requested and was denied opportunity to seek Appellant review, or (2) the right was not knowingly or intelligently waived for appellant review. It is Clear from the numerous pro se Memorandum of law submitted after the PCR counsel abandoned Petitioner after the evidentiary hearing and had not further communication with his client .

This court has allowed successive PCR applications where the applicant has been denied complete Access to the appellant process , *Austin v. State*, 305 S.C. 453,409 S.E.2d 395 (1991) . Under the PCR Rules, an applicant is entitled to a full adjudication on the merits of the original application or "one Bite at the apple" *Aice v. State*, 305 S.C. 448,452,409 S.E.2d 392 ,395 (1991). This "bite" includes an Applicant's right to appeal the denial of a PCR application , and the right to assistance of counsel in That appeal. See *Aice*, 305 S.C. at 448,409 S.E.2d at 392.. *Austin* appeals are considered "belated " Appeals and are used to rectify unjust procedural defects, such as when an attorney does not file a Timely appeal like the case before the court today. See e.g. *Hope v. State* 328 S.C. 78,4922 P.17 S.E 2d 76 n. i (1997) (permitting a belated appeal pursuant to *Austin* in 1992 from a denial of a PCR Application in (1989).

LAW/ANALYSIS

A SUBJECT MATTER JURISDICTION

The state charged in the indictment a crime of "assault and battery" in the offense of Criminal Domestic violence S.C. Code 16-25-20 and the Act that exclusively deals with Member's of a Household. This was error and the court did not have subject matter jurisdiction. It is well Established in south Carolina that issues related to subject matter may be raised at any time, Including the first time on appeal in any court. Carter v.State,329 S.C. 355,495 S.E.2d 773(1998) ;State v.funderburk,259 S.C.256,191 S.E.2d 520 (1972) "the acts of which a court with the respect To a matter as to which it has no jurisdiction are void." Funderburk,259 S.C. at 261,191 S.E.2d at 523. In the case at bar the term assault aand battery cannot be reconciled within the legislative intent of The Criminal Domestic Violence Act. Assault and battery changes the nature of the offense and the Court was without subject matter jurisdiction to convict .State v.LaCoste,553 S.E.2d 464 (S.C.App.2001) See S.C .Code oof laws South Carolina Annotated Volume 8 Tittle 16 Crimes and Offenses Criminal Domestic Violence Article I General Provisions History: 1984 Act No 484,1

NOT A LESSOR INCLUDE OFFENSE

Assault and battery is not a lessor included offense in the offense of criminal domestic violence and is A "person of another" outside the intent of the Legislative intent. Assault and battery includes the Elements of violent injury. S.C.Code 16-25-20 of Article I was enacted to protect against harm or injury To member's of an individuals own household ,Arthures v.Aiken County,338 S.C. 253,525 S.E.2d 542 549(Ct.App.1999) (emphasis added) Further the legislature intent is compelling and could have used The phrase "violent injury" in S.C.Code 16-25-20 in place of the phrase "physical harm or injury" if it

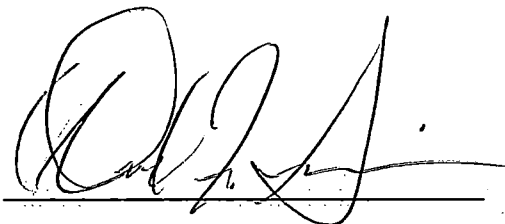
Meant for the two phrases to be synonymous. Moreover the fundamental purpose of S.C. Code 16-25-20 is the protect from harm or injury from "members" of an individuals household. Arthures 525 S.E.2d 542 (Ct. App 1999).The common definition of assault and battery refers to a broader class , "the person of another". The Legislative intent of assault and battery in the 1984 Act Sec 1 were Not contemplated to be considered together.The two offense's protect two different societal Interest's Assaault is a broad emcompassing common -law offense defined as "any touching of the Person of an individual in a rude or angry manner. State v. Harden,29 S.C. (2.Spears)152 (1832), Whereas criminal domestic violence is a targeted offense to protect "household members". The Act 484,1 was the law in March 2001 . See Exhibit Original arrest warrant.

B. PROSECUTORIAL MISCONDUCT BRADY VIOLATION

The prosecution is required to reveal any exculpatory evidence in it's possession. Brady v. Maryland, 373 U.S. 83-87 88 S .Ct. 1194 (1963).Gibson v. State ,334 S.C. 515 514 S.E.2d 320 (1999). A Brady claim Is based upon the requirement of due process, and such a claim is complete if the accused can show (1) The evidence was favorable to the accused (2) it was in the possession of the prosecution or was Known to prosecution (3) it was suppressed by the prosecution ;it was material to guilt or punish- ment . Brady ,U.S. at 87 ,83 S.Ct. at 1196 (1963); State v. Von Dohlen, ,322 S.C. 234,241,471 S.E.2d (1966) .This rule applies to impeachment as well as exculpatory evidence. United States v. Bagley, 105 S.Ct. 3375-3380 (1985); State v. Von Dohlen,Supra ; United States v. Agures,427 U.S. 97 S.Ct. 2392 (1976)

CONCLUSION

A review of this case including the Trial transcripts A and B Appendix the original timely Filed PCR application and testimony from the evidentiary hearing ,along with the various Pro se supplemental Memorandum submitted after the abandonment of PCR counsel Subsequent to the evidentiary hearing, before and after release from prison, and PCR Counsel failure to file an appeal from the decision of the PCR denial of the application a Review will demonstrate that the PCR findings are not supported by the record, and that Trial counsel was ineffective and Petitioner was denied a fundamental fair trial in the first Instance and that petitioner did not knowingly or intelligently waive appellant review of The denial of his original PCR application. Petitioner is entitled to a review based on the Procedural defects and pray this court for a prompt review for the relief requested.

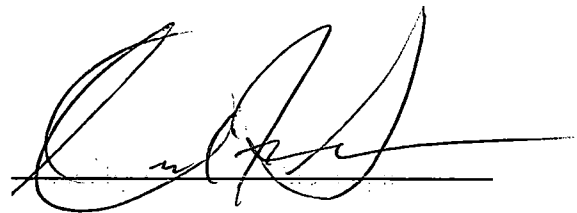
A handwritten signature in black ink, appearing to read "D. Sullivan", written over a horizontal line.

DAVID FARERELL SULLIVAN Pro se

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| STATE OF SOUTH CAROLINA |) | IN THE SUPREME COURT |
| COUNTY OF SPARTANBURG |) | APPEAL FROM SPARTANBURG COUNTY |
| |) | John C. Few , Trial Judge |
| David Farrell Sullivan, Petitioner |) | J. Durham Cole, PCR Judge |
| |) | WRIT OF CERTIORARI |
| Vs. |) | OPINION NO. 25923 |
| The State of South Carolina, Respondent |) | CERTIFICATE OF SERVICE |
| _____ |) | |

I certify, on this date, I served a copy of the Writ of Certiorari in this action dated May 21, 2025, by depositing in the U.S. Mail, in an envelope with sufficient postage to :

Clerk of Court
 Supreme Court Building
 P.O. Box 11330
 Columbia, S.C. 29211



DAVID FARRELL SULLIVAN, pro se

May 21, 2025