RECEIVED
OCT 2 3 2013
S.C. SUPREME COURT

Russell Leon DAVId sr.
Lee Correctional INSt.
990 Wisacky Highway
Bishopville S.C. 29010

DANIEL E SHEAROUSE
Clerk OF COURK Of S.C.O.S.C.
PO Box 11330
CoLumbia S.C. 29211

RE: EXPlANATION From Rule 203 (d)(1)(B), SCACR
When an Appeal is put in.
IN CASE NO. 2013-001718

Dear Mr. Shearouse:

Pleas Fine this designation of Matter is Readed For Filing Pleas Send a Copy To James Rutledge Johnson, Esquire I can not at this Time Send you a Copy For Him or myself.

Thank you For your Time in this matter.

Very truly yours

Russell Leon David sr

Oct. 18 2013

cc.
RLD.

THE STATE OF South Carolina
IN THE COURT OF APPEALS
[IN THE Supreme Court]

RECEIVED
OCT 23 2013
S.C. SUPREME COURT

APPEAL FROM LAURENS COUNTY
Court of Common Pleas
Chief Administrative Judge 8th Circuit
EuGENE C. Griffith Jr.

CASE NO. 2013-001718

Russell Leon DAVIdsr #240689 . . . . Appellant

V.

STATE of South Carolina . . . . Respondent

DESIGNATION OF Matter To be Included
IN THE Record ON Appeal
Explanation To White v. State and
Rule 203(d)(1)(B) SCACR To This Appeal

Appellant proposes the following be included in the Record ON Appeal.

1). Explanation to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) and also Rule 243 (i). SCACR. Showing That There is an issue Which can be Reviewed on Appeal.

2). ANSWer;

3). Appellant Exhibits in the (P.C.R.) Application and AMENDMENT'S as in Record.

I certify That This designation contains no matter which is Irrelevant to this Appeal.

october 18th, 2013.

Russell Leon Davidsr.

M

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
[IN THE Supreme Court]

Appeal FROM LAURENS COUNTY
Court OF Common Pleas
The Honorable Eugene Griffith Jr. Circuit Court Judge

CASE NO. 2013-001718

Russell Leon David sr. #240689 — Appellant.

vs.

State of South Carolina — Respondent.

PROOF OF SERVICE

I certify That I HAVE served The Designation of Matter to be Included IN The Record oN Appeal oN October , 2013 by depositing a Copy of it in The United States Mail. Addressed To The S.C. Court OF Appeals.

OCTOBER 16Th, 2013.

Russell Leon David sr.
Russell Leon David sr
Lee, Corr. Inst. Dar-5-RB
990 Wisacky Highway
Bishopville SC 29010

LEGAL MAIL ONLY

Appellant Comes before This Honorable Court to demonstate and Established That Appellant is Entitled to a **Belated Direct APPEAL** From The UN-Constitutional Guilty Plea Under White V. State, 208 S.E.2d 35 Weathers v. State, 489 S.E.2d 838. Held When There is Proof That Extraordinary Circumstances Exist Counsel must Inform Appellant of his Rights or File The Appeal.

* RoE V. Flores-OrteoA, 528 U.S. 470. Held Where Defendant Neither Instructs Counsel to File Appeal **Nor** Ask that Appeal Not be taken, question whether Counsel has Performed Defciently by not Filling Notice of Appeal is best Answered by First Asking Whether Counsel in Fact Consulted With defendant About Appeal; If Counsel Consulted With Defendant, Counsel Performed in Professionally Unreasonable Manner ONLY by failing to Follow defendant's Express IN-structions With Respect to Appeal, But if Counsel did not Consult With defendant, Court must Determine Whether Counsel's Failure To Consult With defendant itself Was Defictent Performance... The Factor's Was;

1). Whether defendant Recived Sentence Barganed for AS Part of Plea and Whether Plea Expressly Reserved or Waived Sone or all Appeal Rights.

** The Court Stated When Counsel's Constitutionally Deficient Performance Deprives defendant That he OtherWise Would Have Taken, defendant has made out Successful Ineffective Assistance of Counsel Claim Entiling Him To An Appeal. To Show PreJudice From Counsel's Defictent **Failure to Counslt With AppEllant About a Appeal the Court Stated Appellant ONLY** Have to Demonstrate That There is Reasonable Probability That but For Counsel's deficient Performance Appellant Would have Timely Appealed. theses Standard's Apply to Appellant Case because Strickland v. Washinoton, 466 U.S. 104 S.ct. 2052. Provides The Proper FrameWork for evaluating a Claim That Counsel was Constitutionally Ineffective For failing To Filling a Notice of Appeal. Under Strickland. F Appellant must Show.

1). That Counsel Repesentation Fell below an Obsective Standard or Reasonableness, Id. At 688.104 S.ct. 2052, and
2). That Counsel Deficient Performance PreJuiced The defendant, Id. At 694.104 s.ct. 2052.
***Appellant States the Complete Denial of Counsel During a Critical Stage of a Judicial Proceeding, **However**, Mandataes a Presumption of Prejudice because The Adversary Process itSelf has been Rendered Presumptively unrelable, U.S. V. Cronic, 466 U.S. 648, 659 S.Ct. 2039 The Performance and Prejudice Inquiries are SAtisFied IF Appellant Shows Nonfrivolous For Appeal.

GROUND'S FOR APPEAL

1). Appellant GuiltY Plea was not Knowingly, Intelligtly, AND Involotarily **Entered** But was a Product Coercion, Duress, And **MissAdvice** on **What** Conduct Appellant was Guilty OF Due To Appellant Behavior was not Satisfied With The time Appellant Received For His Conduct Involed in Charge's Crimes, Therefore Appellant Was Entiltled to a Direct Appeal to Challeme the UNConstitutional Guilty Plea.
2). Appellant States the Record Reflects That there Was "ConFusing" of Appellant UNderStanding What He Was Charge For, With No Clear Explanation From Counsel over and Trial Court To Give Appellant a Full under Standing of The Guilty Plea. (Appellant States He Stated in **OPEN Court** That Appellant **Didnt Want to Plea to Murder**). Because Appellant is **Innocence of The Murder**.
3). Appellant States The Plea was a Reslt of **Ineffective** Assistance of Counsel Due to Counsel's Failur To Fully Advise Appelland of His Constitutional Rights of the Advantages and Disadvntages of Standing trial and Plea Guilty Because Appellant did not Want to Plea To The Charges.
4). Appellant States in WHite V. State, 208 S.E.2d 35 (1974). While The defendant may not have been Fully Aware of All OF His Rights as AN Indigent or, THe Step'S' Necessary to Perfect an Appeal.

It is indeed incredible that He, A Recent INMate of The Lee Corrections Institution in Bishopville, South Carolina For Several years, Was Totally UnaWare of His Right to Appeal and When He was at other Institution's He Was Told That you dont have a Right to Appeal. Although There was a Resonable basis for Trial Counel's Conclusion or assumption that The defendant was Full ware or not APon That assumption He Should have made Certain That The defendant Was fully aWare of his Right's and in the Absence of an Intelligent Waiver BY The defendant either Pursed an Appeal IN his behalf or else, if deemed Appropriate by Counsel. Comlied With the procedure set Forth in Anders V. State, of California, 386 U.S. 738, 87 S.ct. 1396, 18 L.Ed 2d 493.

THe Hearing Judge Who had before him and Consider The Trial Record Counsel That There Was no Meritorious ground Of Appeal. But Citing The decisions of The United States Fourth Circuit Court of Appeal in Nelson V. PeYtoN, 415 F. 2d 115 and Shiflett V. Commonweath of Viroinia, 447 F.2d 50, Concluded That The defendant didnot Knowing and Intelligntly Waive his Right to Appeal. As a Result Of Such Conclusion The Court directed his present Counsel to Attempt to Secure For The defendant A Belated Appeal To This Court From His Conviction and Sentence.

Defendant Inquiry Regarding Right to a Appeal From Conviction based on Guilty Plea was "extraardinary CircumStance" Requiring Counsel to Inform defendant of his Appellate Rights U.S.C.A Const. Amend. Sixth 6Th

Appellant Argues That The (P.C.R.) Judge erred by Summarily Dismissing his (P.C.R.) Application Based on Appellant Failure to File Within Applicable Statute of Limitations as set Forth in S.C. Code Ann§ 17-27-45(A).

When ConsIdering The State Motion For (P.C.R.) a Judge Must Assume Facts Present by an Appellant as TRUE AND View Those Facts in The Light Most Favorable to Appellant.

UNDER Al-SHABAZZ v. State, 527 S.E.2d 742, 747 (2000).

To WAIVE A DIRECT Appeal a defendant must Make a Knowing and Intelligent Decision not Pursue the Appeal DAVIS v. State. 342 S.E.2d 35. White V. State, 208 S.E.2d 35.

Petitioner Allegts That He Requested an Appeal From His Original Conviction, But His lawyer Failed to Filed The Appeal. Viewed in the light most Favcrable to Petitioner Suggest that Petitioner He didnot Voluntarily Waive His DiNect Appeal.

This Court Has Ruled in Odom v. State, 523 S.E.2d 753. That The ONE Year Statute of limitation Required by S.C. Code ANN § 17-27-45 (A). Does Not Apply To Austin Appeals Austin Appeal's donot Have to be Filed Within The ONE Year Statute of limitations because They are Belated Appeal's Intended to Correct unJust Procedural Defects.

Petitioner is ENtitled to AN **Austin Appeal** if this Honorable Court Decide Find That,

1). Petitioner Requested and was denied an Opportunity to Seek Direct Appeal or,

2). The Right to Direct Appeal was not Knowing and Intelligently Waived. ODOM, 523 S.E.2d at 756.

Petitioner Has The Procedural Right to ONE Fair Bite At the Apple. **This Court Stated every defendant Has A Right to File a Direct Appeal!** IN RE AnonYomous Member of the Bar. 400 S.E.2d.485; ANders V. California. 386 U.S. 738, 87 S.ct. 1396 and one (P.C.R.) Application.

IN This Case Petitioner Has not had one Bite of The Apple Since. Petitioner His not Received Either a Direct Appeal From his Conviction or a [P.C.R.] HeARing Poston v. State, 528 S.E.2d 422. Petitioner Can Demonstrate and Show Cause for The Procedural Default by Establishing That the one-Year Time Bar **Should not Be** Applicable Because Petitione Was Under Extreme Mental Illness Due to The Physiticotropic Medication That Petitioner Was ON Nortrip Tx lineand, Tramadol. These medication are Mind-altering, Minimizeing Your Mind From Thinking. They in Pair Your mind doing What you need To be doing

LEGAL MAIL ONLY

AND This WHY He Couldnot Filed a (P.C.R.) When he WAS Heavenly Sedated Due to The High Medication Content Of The Drug's. The Court's have established That This Procedural Defanlt under These Condition Should give leeway To Appellant's Claim of Why Appellate Never Showed Due Dilingence in filing a (P.C.R.) Application.

Mentalillness Can establist Cause For a Procedural Default in Tolling a Time Situation. and the inadequate Law Library Assistance For Helping Sedated Inmate's ON Medication. (see)(Medaical Exbitson Back). The Designation of Matter to be included in The Record on Appeal.

This will Show on the last Record included For Appeal. Additionally, The Appellant Argues Counsel was Ineffective for Not Objecting to The Conviction and Sentencing When Appellant Didnot Pleaed to The Murder in Open Court This Protection of Law is Lacking Where A Appellant With funds appeal as of Right from a Conviction enjoys benefit of Counsel, While AN indigent Appellant, if He Chooses to Carry out Such an Appeal Following a PREliminary Appellate Court determination That Appointment of Counsel Would be For himself, This Court Should Conclude That The (PCR) Judge Should Have A Hearing limited to Those Allegations That Relate to The Voluntary Character of Mr. DAVID sr. PLEA.

ZAFFARONO V. U.S. 306 F. 2d 707; ibid, 1964. 9 cir. 330 F.2d 114. The mainstay of a Plea of Guilty To Murder with Recommendation to Mercy The plea Would Have Went to The Jury because He Was not going to Plead To The Murder". Instead The Case Would be Remanded For Counsideration of The Accuseds Related ineffective assistance Claim Which a State Official had Conced was Viable AN "Significant".

"IF Affords The State Court's The Opportunity To Resolve The Issue Shortly After TriAL, While evidence was Still was Avaiable both to assess The defendant's Claim and To Retry The defendant effectively if he Inpocence Irrelevant? Collateral Attack ON Criminal Judgment, 38 U.ChI. L.Rev. 142, 147 (1970). This type of Rule promotes Not ONly The accuracy and efficiency of Judicial Decisions by Forcing The defendant to litigate all of His Clims **TOGETHER**; as Quickly after Trial as The docket Will Allow, and While The Attention of The Appellate Court is Focused on his Case" 468 U.S. at 10-11, 104 S.ct. at 2907. Failure to Raise a Claim on AppeaL Reduces The Appellate Court of an Opportunity To Review TriaL error. Because of Comity and FedeRalism Concerns and The Requirement That State's have The First opportunity To Correct Their OWN Mistakes, Federal habeas Court's Generally may not Review A State Court's denial of a State Prisoner's Federal Coustitutional Claim if The State Court's decision Rests on a State procedural default that is Independent of The Feoeral question and adequate to Support The Prisoner's Continued Custody/see e.g; <u>Wainwright V. SYKes</u>, 433 U.S. 72, 81, 97 S.Ct. 2497, 2503, 53 L.Ed. 2d 594, Pp. 2553, 2555. <u>Engle V. Isaac</u>, 456 U.S. 107. 102 S.ct. 1558 Applies even in Which The Alleged even in Cases in Which The alleged <u>"Constitutional ERROR"</u> impaired the truth Finding Function of The TRIAL...

"(<u>Where a</u> Constitutional Violation has prcebably Resulted in <u>The Conviction of ONE Who is actually Innocent</u>, A FedeRal habeas Court may grant The Writ even in The absence of a Showing of Cause For The procedural default)." in other Word's it is not The gravity of The Attorney's error That matters, but That is Constitutes A Violation of Petitioner's Right To Counsel, so That The error must be Seen as an exterral Factor, i.e. "imputed to The State.

Similarly, if The Procedural defuit is the Result of infecTive assistance of Counsel, The 6th Sixth Amendment itself

Requires That Responsibility For The default be imputed To The State, Which may not Conduc TRiAL at Which Persons Who face Incarceration must defend Themselves With out adequate Legal assistance". Cuyler V. Sullivan 446 U.S. 335. 344. 100 S.Ct. 1708. 1716, 64 L.Ed.2d 333 (1980). Ineffective Assistance of Counsel Then is cause for a Procedural default.

At The Outset, it Should be noted That This balancing is More apparent than Real, For The Concurrence must be Whether The Petitioner Was denied "Fundamental Fairness in The State-Court proceedings". Hower, as Noted in Engle, [i]N Appropriate Cases" The Principles of Comity and finality That in Form The Concepts of Cause and Fundamentally unJust incareration". 456 U.S. at 135, 102 S.Ct. at 1576. To remain Confident That, for The most part, "Victims of a fundamental miscrriage of Justice will meet The Cause-and-Prejudice Standard". There is AN additional Safeguard against miscarriages of Justice in Criminal Cases, and one not yet Recognized in State Criminal TRial When many of The opinions on Which The Concurrence Relies Were Written (That Safeguand is the Right to effectiyn assistance of Counsel). Which, as This Court has indicated, May in a Particular Case be Violated by Even an isolated error of Counsel if That error is Sufficiently egregious and Prejudicial U.S. V. Cronic. 466 U.S. 648, 657 N. 20, 104 S.Ct. 2039, 2046 N. 20, 80 L.Ed.2d 657 (1984). see also Strickland V. Washington, 466 U.S. at 693-696, 104 S.Ct. at 2067-2069. The Presence of Such [A] Safeguard May Properly IN Form This Court's Judgment in determining "[W]hat Standards Should govern the exercise of The habesa Court's equitable discretion with Respect to TO Procedurally defaulted Claims.

CONCLUSION

For The Reasons Stated, This Court Should Reverse The Judg-
ment of The Common Pleas Court

OCTOBER 18th, 2013.

Respectfully Submitted
Russell Leon David sr.

LEGAL MAIL ONLY

EXHIBIT'S 1-3

IN CASE NO.#
2013-001718

DAVID sr. V StAtE,

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Health Services

Sick Call Clinic Notes

DATE	TIME	
7/9/97	0915	S c/o L arm pain. (Lifted 50lbs of Flour)
		O. T97 P.74 R.18 B/p 120/70 Wt. 227 lbs no redness
		noted, skin warm, no restrictions c ROM.
		A. Musculoskeletal discomfort
		P. Has Motrin 800 mg i po TID in his possession &
		instructed to take as previously instructed.
		Heat Compresses, shower soaks QID X 3 days
		RTC in 3 days if no improvement, restrict
		strenuous activities. NWP for 7-9-97.
		[illegible signature]
		M. Williams RN
8-5-97	1005	S) Med renewal
		O) wt. 230 T-97 P-72 R-18 B/p 120/78
		No c/o's @ present. I/M states he wants to be referred
		to behavioral med. Mr. James was notified.
		A) Routine Med Renewal
		P) Meds: Motrin 600 mg i TID c meals
		~~[illegible] 20 mg PO QD~~ x 90 days
		Atarax 25 mg po BID
		C. Ridgell LPN [initials]
8-7-97	0910	S) Ears need cleaning out.
		O) wt. 225 T-97.4 P-84 R-18 B/p 118/78
		No obstruction noted in ear X2.
		A) R/O Ear wax
		P) Patient Teaching: Clean c warm water
		inside ear canal, no use of q-tips. Use
		washcloth PRN. RTC PRN — C. Ridgell

SCDC # 240689 Inmate's Name: David Russell

SCDC M-18 (Rev. August 1986)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Health Services

Sick Call Clinic Notes

DATE	TIME	
12/11/97	0915	S) I break out with hives + start itching. The
		Hives come + go lasting 30 minutes to one hour.
		The Hives break out all over my body. Admits
		being nervous at times due to being incarcerated.
		Hives worse at night. Rash on + off x one
		week. Denies having any ideas about harming
		self.
		O) T-98.0, R-20, P-80 regular, BP-120/82, Wt-219 lbs
		Lungs clear, respirations even + nonlabored. Slight
		redness noted to Ⓛ forearm. No raised bumps
		present. Slight redness noted across chest, no
		welps or raised bumps noted. Slight redness
		noted across top of back. No welps noted.
		No redness or rash noted to lower extremities.
		I/m noted to be scratching Ⓛ forearm occasionally.
		A) Slight rash - defer to MD.
		P) Refer to MD. - OTR given to I/m for MD appointment
		12/12/97 @ 1000. Pill line pass issued for 0645 +
		1800 for 12-11-97 - 12-21-97 - I/m states he has not
		been able to come to pill line due to Correctional
		Officers, to pick up his Atarax. Atarax 25mg
		not signed out for 12/11/97 @ 0630 - I ~~to~~ ME mm 12/11/97
		issued ÷ Atarax 25mg to I/m while in medical to
		help calm him to relieve the itching. Instructed
		I/m to use pill line pass to come 2x day.
		I/m verbalized understanding. ~~No Atarax~~ ME mm 12/11/97
		Atarax 25mg has not been signed out to I/m ~~done~~ ME mm 12/11/97
		none during the month of December. One bottle of
		Calamine lotion issued to I/m to use after shower to
		help relieve itching until appointment with MD
		in the morning. I/m verbalized understanding per

SCDC # 240689 Inmate's Name: David Russell

SCDC M-16 (Rev. August, 1986)

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
Division of Health Services

Sick Call Clinic Notes

DATE	TIME	
12-11-97	0915	instructions given. Ms. Rosemary Murphy, RN
		Head nurse OKayed the issuing of the
		Calamine Lotion. — Michelle McManus RN —
12/11/97	2100	I/M has only taken 2 doses of Atarax 25mg in
		past 10 days. When at pill line tonight I asked
		me to him about his med. I/M replied, "I thought
		I could do ō it. I didn't think it was doing
		any good but then I broke out in this rash.
		I had to have something. Do you think the
		doctor could give me something stronger?"
		Chart will be referred to MD - J Floyd [illegible]
12-11-97	0840	Atarax 25mg PO [illegible]
	MM Dr 12-11-97	Atarax 25mg PO issued to I/M. — M. McManus RN
12-12-97	1015	S) See above notes per Pt. having hives
		O) T-97.7, R-20, P-80 regular, BP-130/90 Wt-220 lbs
		A) Defer to MD
		P) Refer to MD. — Michelle McManus RN —
12/12/97	1045	S) Low Backache - Back Injury 1994 -
noted am [illegible]		O) Subjective pain X-ray Mild Degen lumbar
1142	12-12-97	A) Mild Degen Dis Disease
	Done	P) Kenalog 40mg IM.
		D/C Motrin
	Pill line pass issued	✓ Zostrix [illegible] X90 days [illegible]
12/12/97	1110	Kenalog 40mg IM administered Ⓛ upper gluteal
		muscle with no difficulty. — Michelle McManus RN
12/18/97	1800	Talked ē I/M about Atarax. I/M states that he
		feels much better now that he's on that other
		med. too (Ecotrin) no changes needed to be
		discussed at this time — J Floyd [illegible]

SCDC # 240689 Inmate's Name: David, Russell

SCDC M-16 (Rev. August, 1986)