THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Circuit Court Judge

Case No. 2023-CP-26-00337

Michael J. Walton, *pro se*, ...Petitioner,

V.

Ryan T. Kowalski, Assistant Attorney General, ...Respondent.

MOTION TO SHOW CAUSE PURSUANT TO RULE 243(c)

This motion arises from the PCR application in the above-referenced case which was centered on the claims of ineffective assistance of Counsel. This motion addresses three (3) main points of the PCR Court's ruling: 1)To date the PCR Court has failed to address each claim in the PCR application with conclusions of law and findings of fact, as required by §17-27-80 and Rule 52(a) SCRCP; 2)the Court claims that Petitioner declined his right to appeal and; 3) the Court also claims the Petitioner untimely filed his PCR application. Furthermore, the denial of the PCR application appears to hinge on the credibility of Mr. Ralph J. Wilson ("Plea Counsel" herein) versus the credibility of Michael J. Walton ("Petitioner" herein). The Petitioner now asks the forbearance of the Supreme Court as he states the reasons PCR court's ruling was in error; why credibility of Plea Counsel should be brought into question and Petitioner's credibility be acknowledged, and why *certiorari* be granted.

On March 19, 2025 a PCR hearing was held in the Horry County Courthouse with the Honorable Judge Dale E. Van Slambrook presiding. Petitioner's assigned PCR Attorney was dismissed and Petitioner proceeded *pro se*. Ryan T. Kowalski, Assistant Attorney General, represented the State of South Carolina. The Petitioner gave credible and verifiable testimony of facts, conclusions of law, and circumstances surrounding each claim. Plea Counsel was then questioned by Mr. Kowalski and was followed by questioning by the Petitioner. Following are case facts that will show the PCR Court did not follow State statutes and guidelines, that Plea Counsel was not only ineffective but not credible as well, and that Petitioner was credible and did in fact timely file his PCR.

1. The Court has failed to address each claim in the PCR application with conclusions of law and findings of fact, as required by §17-27-80 and Rule 52(a) SCRCP. Fishburne v. State 427 S.C. 505: Justice Hearn stating "…it is necessary once again to remind the State, opposing counsel, and the circuit court of the need for orders that contain specific findings of fact and conclusions of law."

2. Plea Counsel is given unmerited credibility in the PCR judgment.

a. When questioned by Petitioner in the March 19, 2025 PCR hearing, Plea Counsel could not find the date of arrest on the indictment shown to him by Petitioner. Petitioner believes this to be a very basic and fundamental ability for any expert in the law. In addition, when questioned about the difference between second degree (2^{nd}) and third (3^{rd}) degree on the same indictment, Plea Counsel flippantly replies that it was "just a letter difference… a B or a C."

b. Plea Counsel was questioned by Petitioner as to the number of cases he has handled to which he replied about Forty (40) or Fifty (50) per year. This adds credence to Petitioner's

misgivings of the reliability of Plea Counsel to recall individual case details particularly after seven (7) years has passed as in Petitioner's case.

c. Plea Counsel was also questioned on how many years he had practiced law to which he stated was about Forty-Eight (48) years. Petitioner then asked Plea Counsel if he remembers details from each case. Plea Counsel replied that he does not. Yet Plea Counsel and the State expect the Court to believe Plea Counsel has correctly remembered all details of Petitioner's case seven (7) years prior including regarding advisement of right to Appeal and the right to file a PCR. Plea Counsel's recall of details reflects what is characteristically known as "hindsight bias" and "counterfactual thinking" where Plea Counsel's memory is affected by what he *thought* should happen thus creating an alternate reality. In point of fact, concerning reliability of Plea Counsel's memory, Plea Counsel incorrectly spoke, in the April 26, 2018 hearing, from his own notes of a discussion with Petitioner, taken just *hours* prior to the hearing. In Court Plea Counsel gave accounts of Petitioner having a "house in Texas" and "not even a speeding ticket," neither of which were in Plea Counsel's notes, were not true, and were never told to him by Petitioner.

d. In another point of fact regarding reliability of Plea Counsel's memory, Plea Counsel admitted meeting with Petitioner in a courtside conference room only *after* hearing of it in Petitioner's PCR testimony; this is the same meeting in which Petitioner questioned Plea Counsel about PCR. This conference room is where Plea Counsel told Petitioner he could *not* file a PCR because he had pled guilty. Petitioner, not knowing any different at that time, still fully trusted Plea Counsel's expert advice and never pursued any judicial review until around early 2022 at which time he became aware and knowledgeable that he, in fact, could do so (see section 5(d) below).

3. Petitioner truthfully testified that he did not knowingly and intelligently decline his right to Appeal. As Petitioner related in testimony given in the March 19, 2025 PCR hearing, he relied on Plea Counsel to be an expert in law and, up until early 2022, still held confidence that Plea Counsel had looked out for his best interests. At the April 26, 2018 hearing, Plea Counsel misinformed Petitioner when he questioned Plea Counsel on the potential for an Appeal by replying that it "would be ridiculous because the Judge would wonder why [he] was appealing after having pled guilty." Strader v. Garrison 611F. 2d 61 (4th Cir. 1979) "when he is grossly misinformed by his lawyer and relies on such information he is deprived of his constitutional right to Counsel and when the erroneous advice induces a guilty plea, permitting him to start over again is the imperative."

4. Plea Counsel deficiently defended Petitioner. In the judgment dated June 11, 2025, the State quotes Plea Counsel as testifying in PCR Court "that he told Applicant about the issues with his indictment." In this manner, Plea Counsel is proving he alone is responsible for missing several opportunities to bring to light the fatally flawed indictments and change the outcome of the case for Petitioner. Plea Counsel's testimony also proves he had a *laissez-faire* attitude toward Petitioner's case and was thereby ineffective counsel.

5. Petitioner further credibly testified that he did not knowingly and intelligently decline his right to file a PCR. Petitioner truthfully testified as to the reasons for the "untimely" filing of his PCR. Although Petitioner did not have documentation of his timeline in Court, he did believe the Court would accept his sworn testimony as truth. The PCR Court failed to "assume facts presented by [the] applicant are true and view those facts in the light most favorable to the applicant" Al-Shabazz v. State, 338 S.C. 354, 364, 527 S.E.2d 742, 747 (2000), and, Leamon v.

State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). However, the facts of the timeline can be verified against SCDC records if they were to be subpoenaed.

Please note the following timeline:

a. At the April 26, 2018 hearing, Petitioner asked Plea Counsel about an Appeal. Plea Counsel told Petitioner that it would be ridiculous to appeal since he would be back in Court with the Judge wondering why, since he was pleading guilty. This reply dissuaded Petitioner from pursuing an appeal since Petitioner trusted Plea Counsel's knowledge of the law and Petitioner believed that Plea Counsel was looking out for his best interest.

b. At the June 27, 2018 hearing regarding a "scrivener's error," Petitioner met with Plea Counsel in a courtside conference room. Prior to this meeting Petitioner had heard about Post Conviction Relief (PCR) from his roommate at Kirkland R&E but did not understand what it was at that time. Petitioner asked Plea Counsel about PCR and Plea Counsel told Petitioner that he could not do a PCR because he had plead guilty thereby dissuading and advising Petitioner against pursuing PCR. Petitioner still felt no reason to question Plea Counsel's knowledge of the law and still believed that Plea Counsel was looking out for Petitioner's best interest and therefore did not see any compelling reason to pursue investigating PCR any further.

c. Around November of 2019, while at Perry Correctional Institution, Petitioner became extremely ill. In a short matter of time, Petitioner's medical issues worsened. On January 2, 2020, Petitioner passed out in the dorm and was hospitalized. This began a nearly Four (4) month long stay in three different hospitals (twice each) where Petitioner nearly died. In fact, during Petitioner's hospital stays he required several blood transfusions, intravenous feeding, and multiple surgeries including the removal of his large intestine leaving him

permanently damaged. Upon release from the last hospital on May 4, 2020, Petitioner was placed in Infirmary care at Kirkland Correctional Institution for a month before being transferred to the McCormick Correctional Institution where he resided and convalesced in their Infirmary for over 16 months. This was concurrent with the COVID-19 pandemic which caused further restrictions in every aspect of society as well as prisoner access to resources.

d. In October of 2021, still under medical watch, Petitioner was transferred to the general population at McCormick Correctional Institution where he attended inmate led classes. Petitioner was enrolled in a "Legal Dialogue" class. After several months of the class and discussions of Petitioner's legal paperwork with other inmates, Petitioner became aware of S.C. Code §17-27-45(c) ("evidence of material facts not previously presented and heard"). Studying further, Petitioner came upon a case which provided support for his filing of a PCR: McCoy v. State 401 S.C. 363 "the PCR judge apparently overlooked the discovery rule in section 17-27-45(c), which allows one year after the discovery of 'material facts not previously presented and heard that require [ ] vacation of the conviction or sentence' to file an application." Petitioner only then came to the realization that his legal documents, *scilicet* indictments, sentencing sheet, etc., had fatal flaws. Petitioner was further able to determine that Plea Counsel had in fact been deficient in handling Petitioner's case; had misled him about his right to Appeal; and had misled him concerning his right to file a PCR.

e. Simultaneous with his other medical issues during imprisonment, Petitioner was severely affected by extreme pain from an arthritic hip. This substantially affected his ability to focus on daily routines while convalescing. Several orthopedic and surgery appointments

were missed due to COVID-19 restrictions impacting scheduling and further delaying relief from pain. Petitioner did not receive hip replacement surgery until February 16, 2023.

CONCLUSION

In conclusion, Petitioner has shown this Honorable Court that the PCR Court did not follow State statutes and guidelines regarding evaluation and fair judgment of his PCR application. Petitioner also believes he has respectfully and truthfully shown this Honorable Court, that he never knowingly or intelligently waived his rights to appeal or post-conviction relief procedures, and that he was truly misled by Plea Counsel regarding those matters. Also shown was the fact that Petitioner had suffered a loss in time and ability to diligently pursue any course of action due to two (2) severe medical complications and the COVID-19 pandemic which caused further set-backs. As such, Petitioner respectfully requests that he be granted avenue to petition the court for *writ of certiorari*.

Respectfully submitted,

July 24, 2025

S/ _____

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