

State of South Carolina
County of Richland

Michael Thomas 329370
Applicant

V.
State of South Carolina
Respondent

RECEIVED

JAN 27 2026

SC Court of Appeals

In the Court of Common Pleas
for the Fifth Judicial Circuit

Case # 2025-CP-40-D1962

Affidavit of Michael Thomas
Sufficient Reason

I. Reason why applicant should be allowed to file a successive Post-conviction Application:

Applicant claims that his successive Post-Conviction relief (PCR) application should be filed, accepted and rule upon where the state through Rule 71.1(d) SCRCP, appointed Counsel to assist him due to his indigency in his first PCR Application i.e., case no. 2017-CP-40-0943, that was filed on February 22, 2017. South Carolina Rule of Civil procedure 71.1(d) provides appointment of Counsel for hearing. If after state has filed its return the application presents question of law or fact which will require a hearing the court shall promptly appoint Counsel to assist the applicant if he is indigent. Counsel shall ensure that all available grounds for relief are including in the application and shall amend the application if necessary. Rule 71.1(d) SCRCP. See also S.C. Code Ann § 17-27-60 (2014) "If the applicant is unable to pay Court costs and expense of representation... these costs and expenses shall be made available to the applicant!"

In *Whitehead v. State*, 310 S.C. 532, 426 S.E.2d 315 (1992) S.C. Supreme Court Justice recognized that Rule 71.1(d) SCRCP mandates the appointment of Counsel for indigent PCR applicants whenever a PCR hearing is held to determine question of law or facts". *Id.* 310 S.C. at 535, 425 S.E.2d at 316.

Before allowing a PCR Application to proceed without an attorney first the Court should make sure the applicant is aware of his rights to Counsel. Second the court should ensure the applicant understands the danger and disadvantage of self-representation.

Applicant states that some issues he is raising in this successive PCR application was not raised or amend in his first PCR application, i.e., 2017-CP-40-0943 because his PCR Counsel Mr. Jonathan D. Waller, who was appointed to assist him pursuant to Rule 71.1(d) SCRCP, due to his indigent performance fell below an objective standard of reasonableness in failing to raise the ineffective assistance of Counsel claim against Counsel, Robert L. Banks Jr. As required by Rule 71.1(d) SCRCP, in which he should have amended his PCR application on his behalf; since he was appointed. *Foster v. State*, 298 S.C. 306, 379 S.E.2d 907 (1989); *State v. Dunbar*, 587 S.E.2d 691; *State v. Sanders*, 269 S.C. 215, 237 S.E.2d 53 (1977). PCR Counsel Jonathan D. Waller performance also fell below an objective standard of reasonableness when he failed to show that Robert Banks failed to present the Courts with the evidence of the victim statement which she claims she was anally penetrated. However the nurse triage notes states, the victim say she was not anally penetrated. *Pauling v. State* 331 S.C. 606 503 S.E. 467 (July 13, 1998) In *Pauling v. State* the victim told police that the intruder penetrated her, but told the nurse that the intruder did not).

Since this case Pauling v. State is so similar to mine ~~and~~ the one I am raising
The law which applies to it should apply to my case.

Since there is no right to hybrid representation, substantive documents filed pro-se by a person represented by counsel are not accepted unless submitted by counsel. Foster, 298 S.C. at 307, 379 S.E. 2d at 907. PCR Counsel would not amend applicant's PCR Application and therefore, it was a government appointed ~~counsel~~ Counsel, Jonathan D. Waller; duty and responsibility to applicant, pursuant to Rule 71.1(d) SCRPC to amend Applicant PCR application i.e., 2017-CP-40-0943 with the ineffective assistance of counsel issues presented in this Application, because he failed to comply with South Carolina Rules of procedure 71.1(d) It is Applicant's belief that under the Due

Process Clause and equal protection clause of the 5th and 14th amendment of the United States and South Carolina Constitution article I, §3 a right to the appointment of Counsel pursuant to Rule 71.1(d) SCRPC, due to applicant's indigency as well as S.C. Code Ann §17-27-60 (1976). Applicant is unable to pay cost and expense for representation. Therefore as an destitute an indigent.

Applicant ask this Court to appoint Counsel to assist him. see Rule 71.1(d). Pursuant to Strickland v. Washington, 466 U.S. 668, 687-688 (1984), it is a question of law, whether an defendant seeking relief from his Criminal conviction; through a collateral proceeding, such as, under title 17, Chapter 27, if an applicant is entitle to effective assistance of Counsel. Once the Court appoint him Counsel Pursuant to Rule 71.1(d), SCRPC?

Because there is a corrective process of law that protects citizens accused of a crime convicted wrongfully from having a substantial ineffective assistance of trial Counsel claim in a collateral proceeding, when the court or government appoint Counsel pursuant to Rule 71.1(d), SCRPC, fails to comply with Rule 71.1(d), in ensuring that all available grounds for relief are included in his first PCR application, in which he is only allowed one full bite at the apple.

Applicant states that because his PCR ~~by~~ Counsel, Jonathan D. Waller did not raised the ineffective assistance of Counsel claims that are being raised in this application in his first PCR application, his PCR ineffectiveness result in him being subjected to the prejudices of the state preventing him from having these issues heard by the state court on ground that they were not raised within the one year statute of limitations and that his second PCR application is successive, time barred and subject to dismissal. see cases where PCR Counsel failed to comply with Rule 71.1(d) SCRPC. E.g., ~~man~~ Mangal v. State, 421 S.C. 85, 805 S.E.2d 568, the state did not hear his claims of ineffective assistance of Counsel, because issues wasn't raised in his first PCR application by Court

Appointed Counsel. Applicant states that there should be a state remedy made available, such as to allow an application to file an successive PCR application, when the government, the County in which has tried and convicted a Citizen of this state and the United States of America, and is deprive of his due process of right to liberty, life and property; and there exists a Constitutional violation -state or federal or both that he can prove resulted in his or her conviction, but was prejudice ~~by~~ ^{of} being able to raise this Constitutional violation in his first PCR application because the government appointed Counsel under Rule 71.1(d) failed to comply with the rules, in its entirety by ensuring that all available grounds for relief were included or amended in his first PCR application. This rendered the S.C. PCR ACT meaningless as a collateral attack on a wrongful Criminal Conviction. If a applicant can prove that his issues raised in an successive PCR application was raised in the first PCR application due to violation of Rule 71.1(d), the State Court should allow the filing of an successive PCR application, raises a substantial Constitutional violation, Federal and/or state or both, that resulted in his ~~conviction~~ wrongful Conviction in state Criminal Court.

Based on Applicant's aforementioned argument and preponderance of evidence, he ask this Court to accept ~~and~~ allow him to file an successive PCR application on grounds ~~set~~ set in his successive application.

I.I.I.

Applicant claims he also can prove and has prove in the issues enclosed, i.e ineffective assistance of Counsel Claims are substantial claims, in which show that he is entitled to relief pursuant to Strickland v. Washington, 406 U.S. 668, 687-688 (1984) against his trial Counsel and that based on those substantial Ineffective assistance of trial Counsel Claims, that it would be a miscarriage of Justice for this state Court not to allow him to file an successive PCR application, in which resulted in his conviction and denial of his Due process of right to liberty, life, and property. The direct verdict issue not properly raised or

requested and preserved, based on insufficiency of the evidence, was a trial Counsel error that effected the presumption of innocence; where the state failed to prove each and every element in which the indictment as returned by the grand Jury

Under the penalty of per-Jury, I Michael Thomas hereby under oath swear that the above information in this document is truthful to the best of my knowledge and belief

Respectfully submitted
1st Michael Thomas
Michael Thomas #329390
MCIF 4-A 252
386 Redemptional way
McCormick, SC 29599

Applicant

Date 12/8/2025

RECEIVED

JAN 27 2026

SC Court of Appeals

ACKNOWLEDGEMENT

State of South Carolina
County of _____

On this 11 day of December, 20 25, before me personally
appeared Michael Thomas, who provided satisfactory evidence of her
Document Holder

identification to be the person whose name is subscribed to this instrument and she
acknowledged that she executed the foregoing instrument by her signature here.

Michael Thomas
Document Holder's Signature

Sworn to (or affirmed) and subscribed before me this the 11 day of
December, 20 25.

T. Thomas
Official Signature of Notary

(Official Seal)

T. Thomas, Notary Public
Notary's printed or typed name

McCormick County, South Carolina

My commission expires: 10/28/2030

**The county listed at the top of the acknowledgement is the county where the notarization is taking place. The county near the notary's signature is the notary's county of residence.*

TALISA THOMAS
Notary Public
State of South Carolina
My Commission Expires Oct 28, 2030