

TYRONE JACOBS, 328542
LEE C.I.
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010

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JUL 5 2012

S.C. Supreme Court

June 25, 2012

HON: DANIEL E. SHEAROUSE
CLERK OF SUPREME COURT
PO BOX 11330
COLUMBIA, S.C., 29211

RE: JACOBS V. THE STATE OF S.C., 2011-CP-26-01414, etc.,
SEE ENCLOSED PETITIONER'S PRO SE BRIEF.

DEAR MR. SHEAROUSE:

PLEASE SEE ENCLOSED FOR FILING MY PRO SE BRIEF AND ATTACHMENTS TO INCLUDE THE APPENDIX AND THE PROOF OF SERVICE, I ALSO PROVIDED TO YOU MY EXTRA COPIES WITH A SELF ADDRESSED ENVELOPE FOR YOU TO RETURN MY COPIES TO ME WITH YOUR OFFICE SEALS PLACED ON THEM FOR MY FILES. I AM COMPELLED BY YOUR OFFICE TO FILE MY PRO SE BRIEF WITHIN THE FORTY-FIVE DAYS AS IS REQUIRED AND I HAVE TIMELY FILED THIS PRO SE BRIEF.

THANKING YOU IN THE ADVANCE FOR YOUR TIME AND HELP GIVEN TO ME IN THIS CRUX MATTER AND I LOOK FORWARD IN HEARING FROM YOU IN THIS VERY NEAR FUTURE.

June 25, 2012

RESPECTFULLY SUBMITTED,

ENCLOSURES:

TJ/el

cc: HON: D.E. SHEAROUSE
FILES/TJ

s/

Tyrone Jacobs
TYRONE JACOBS
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010
Pro Se PETITIONER

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUL - 5 2012

CERTIORARI TO Horry COUNTY

HON: STEVEN H. JOHN, Cir. Ct. JUDGE

S.C. Supreme Court

CASE NO. 2011-CP-26-01414

TYRONE JACOBS, , PETITIONER,

Vs.

STATE OF S.C., , RESPONDENT.

PETITIONER'S PRO SE BRIEF
PER SE CLERK OF S.Ct., etc.

TYRONE JACOBS
PETITIONER, pro se
LEE C.I.
990 WISACKY HWY.
BISHOPVILLE, S.C.
29010

OTHER COUNSELS

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TABLE OF AUTHORITIES

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APPENDIX

*PCR COUNSEL FAILED TO AMEND PRO SE FILED APPLICATION WITH ALL AVAILABLE ISSUES FROM THE RECORDS AS SHOWN: S.C. Supreme Court

**PCR COUNSEL WAS INEFFECTIVE FOR NOT OBJECTING TO THE COURT REQUIRING APPLICANT TO PROVE BEYOND A REASONABLE DOUBT TO ESTABLISH BY A PREPONDERANCE OF THE EVIDENCE THAT HE ACTED IN SELF DEFENSE ON SUDDEN PROVOCATION, IN ORDER TO REDUCE MURDER TO MANSLAUGHTER, BY THIS ERRONEOUS INTERPRETATION OF THE LAW PREJUDICED APPLICANT DURING TRIAL, SEE RULE 59(e) MOTION FILED Pro Se:

**PCR COUNSEL INEFFECTIVE FOR NOT RAISING IMPROPER JURY INSTRUCTIONS GIVEN BY THE COURT WHEN IT INSTRUCTED THE JURY ABOUT THE LAW REGARDING HERE INTENT OF ACCUSED IS AN INGREDIENT OF THE CRIME CHARGED, ITS EXISTENCE IS A JURY ISSUE, THE TRIAL COURT PREJUDICED THE APPLICANT WHEN IT INSTRUCTED THE JURY BY INSTRUCTIONS THAT THE LAW RAISES A PRESUMPTION OF INTENT FROM THE ACT, SEE Pro Se FILED RULE 59(e) MOTION:

**PCR COUNSEL INEFFECTIVE FOR NOR RAISING DECEDENT BEING UNDER INFLUENCE OF ALCOHOL PLAYED MOSTLY A FACTOR OF THE SITUATION HAPPENED BETWEEN THE APPLICANT, WITH TO INCLUDE THE DECEDENT WAS PREVIOUSLY UNDER THE USAGE OF COCAINE DRUG, APPLICANT'S TRIAL COUNSEL FAILED TO PROPERLY PRESENT THE EVIDENTIARY AND FACTUALS TO THE JURY AS IT IS PRODUCED TO THE COURT BY THE EXPERT, SEE Pro Se FILED RULE 59(e) MOTION:

**PCR COUNSEL INEFFECTIVE FOR NOT RAISING THE ISSUES ABOUT HOW THE COURT ALLOWED THE PROSECUTION TO MISREPRESENT FACTS AND STATEMENTS THAT SHOWS VICTIM INITIATED THE ALTERCATION AND USED THREATS THAT OF WHICH COMPELLED APPLICANT TO LEAVE FROM THE INSIDE OF THE PLACE, THE COURT ALLOWED THE COURT TO BE MISINFORMED ABOUT APPLICANT RETRIEVING HIS JACKET AND THEN GOING ON THE OUTSIDE OF THE PLACE AND THEN TO BE CONFRONTED BY THE DECEDENT ON THE OUTSIDE OF THE PLACE, THAT OF WHICH THE VICTIM PUSHED BY THE OWNER OF THE PLACE HE AND THE DECEDENT WAS AT, SEE Pro Se FILED RULE 59(e) MOTION:

**PCR COUNSEL FAILED TO PRODUCE WITNESSES TO THE PCR HEARING TO GIVE CLARITY TO THE FACTUAL ABOUT THE POOLSTICK BEING IN THE DECEDENT'S POSSESSIONS WHEN HE CAME OUTSIDE OF THE PLACE EVEN AFTER HE WAS TOLD NOT TO GO ON THE OUTSIDE WITH THE OWNER PROPERTY AS IT BEING THE POOLSTICK, AND HOW THE SOLICITOR IMPROPER REMARKS ABOUT YOU MUST HAVE A POOL STICK WHILE BEING IN THE PLACE, THE NATURAL FACT OF THIS MISREPRESENTED STATEMENT IN THE PRESENCE OF THE JURY SHOWS THE PROSECUTOR TESTIFYING FOR THE VICTIM DURING TRIAL, SEE RULE 59(e) MOTION FILED Pro Se:

**PCR COUNSEL FAILED TO RAISE THE FACT THAT THE TRIAL COURT IMPROPERLY APPLIED THE FOUR MANDATES THAT DICTATES FOR

SELF-DEFENSE AND SHIFTED THE BURDENS OF PROOF ON THE APPLICANT IN ORDER FOR HIM TO RECEIVE A CHARGE OF SELF-DEFENSE FROM TRIAL COURT, AND IN THIS IT DID VIOLATED APPLICANT 6th AND 14th AMENDMENT RIGHT TO A FAIR TRIAL, SEE Pro Se FILED RULE 59(e) MOTION:

**PCR COUNSEL FAILURE TO RAISE COURT DID NOT PRESENT COMPETENT EVIDENCE FOR PHYSICAL EVIDENCE TO CONVICT APPLICANT OF MURDER, BECAUSE THE EXPERT TESTIFIED TO THE SOLE FACTS THAT HE PRONOUNCED THE DEATH OF THE VICTIM AT APPROX. 7:14 P.M.:

**PCR COUNSEL INEFFECTIVE FOR NOT RAISING THE ISSUE ABOUT THE VIOLATION TO §17-19-30, WHEREAS, THE TIME OF DEATH AND THE TIME OF ASSAULT MUST BE ACCURATELY STATED IN ORDER FOR AN INDICTMENT TO BE PASSED DOWN BY THE GRAND JURY AND PROPERLY CONVICT THE DEFENDANT BY STANDING CODE OF LAW AS S.C. CODE OF LAW §16-3-10;

**PCR COUNSEL INEFFECTIVE FOR NOT RAISING THE VIOLATIONS OF APPLICANT STATUTORY RIGHTS PURSUANT TO §17-19-30, THAT IT BEING TIME OF ASSAULT AND TIME OF DEATH TO BE ACCURATELY STATED IN THE INDICTMENT IN ORDER FOR THE COURT TO PROPERLY CONVICT THE DEFENDANT FOR MURDER, AND HERE THE APPLICANT WAS PREJUDICED AGAINST WHEN NO PRE-TRIAL MOTION TO QUASH INDICTMENT BEFORE THE FIRST JUROR WAS SELECTED; THIS IS AN AVAILABLE ISSUE OF THE RECORD AS CLEARLY SHOWN FROM EXPERT TESTIMONY SEE TT. Pg. 245-248, AND WITHSTANDING THE FACT THAT NO CONOR'S REPORT FOLLOWS AS ADMITTED IN EVIDENCE AND TO REFRUTE THIS CLAIMS:

**APPELLATE COUNSEL INEFFECTIVE PURSUANT TO SEE CASE AUTHORITIES AS: GILCHRIST V. STATE, 364 SC 173, 612 SE2D 705 (2005); ANDERSON V. STATE, 354 SC 431, 581 SE2D 834 (2003); AND SOUTHERLAND V. STATE, 337 SC 610, 524 SE2D 833 (1999), THE APPELLATE COUNSEL HAD NO CHOICE AT THE MATTER TO RAISE ALL OF APPLICANT'S ISSUES TO THE APPELLATE COURT FOR AN APPELLATE REVIEW, AND THIS VIOLATED APPLICANT TO AN ENTITLED REVIEW FROM THIS COURT, THE ORDER OF DISMISSAL IS THAT OF AN ADVERSE TO THE APPLICANT. HOWEVER, THE APPLICANT FILED A PRO SE RULE 59(e) MOTION SO THAT THE COURT WILL PERFORMED IT DUTIES ACCORDINGLY TO §17-27-80 TO 90, etc. THE APPELLATE COUNSEL WAS WELL ADVISED THAT THE PCR COUNSEL HAS A HISTORY OF NOT CONDUCTING HIS DUTIES TO BE PERFORMED BY LAW, THE COUNSEL VIOLATED RULE 71.1(D), SCRPC, AND THE PCR STATUTE THAT REQUIRES HIM TO AMEND THE PCR WITH ALL AVAILABLE ISSUES OF THE RECORD, AND HERE THE PCR COUNSEL DID NOT PERFORMED THIS DUTY, THE APPLICANT MADE EXPLICITLY STATING AND DEMANDS TO HAVE HIS RULE 59(E) MOTION RULED UPON. EVEN THOUGH THE COUNSEL FILED THE APPEAL TO BAIL HIS SELF OUT FROM THE PCR CASE, HOWEVER THE PCR COUNSEL DISPLAYED NOT GIVING HIS CORPORATION TO THE APPLICANT IN THE INITIALING OF HIM BEING APPOINTED TO REPRESENT APPLICANT FOR PCR, THE SOLE FACTS THAT THE COUNSEL IS FULL AWARE OF THE FACSTS THAT THE MARLAR COURT GIVES SPECIFIC INSTRUCTIONS TO HAVE A 59(e) MOTION FILED TO SECURE AN ACCURATE AND PROPER APPELLATE REVIEW FROM THE APPELLATE COURT, THE APPELLATE COUNSEL VIOLATED APPLICANT RIGHTS TO NOT HAVE THE PROPER MOTION TO BE FILED SO

THAT THE RULE 59 MOTION COULD HAVE BEEN RESOLVED. THE APPLICANT WAS PREJUDICE AND CAUSED HIS ISSUES TO BE ABANDONED BY THE APPELLATE COUNSEL DUE TO THE INEFFECTIVE ASSISTANCE FOR NOT BRIEFING ALL ISSUES TO THE STANDING OF LAW IN THE SC STATE.

NOTE: THE CLOKED FILED RULE 59(e), SCRPC, MOTION HAS ALL LISTED ISSUES IDENTIFICATIONS IN TRIAL TRANSCRIPT SHOWING THE AVAILABILITY OF THEM FROM THE RECORD THAT THE PCR COUNSEL DID NOT RAISED AT PCR, NOR DID COUNSEL AMENDED THE ISSUES BEFORE PCR HEARING WAS HELD, THE APPELLATE COUNSEL WAS PRIORALLY ADVISED BEFORE SHE FILED HER BRIEF TO THE COURT, SHE WAS INFORMED OF THE FACTS THAT APPLICANT HAD FILED A RULE 59 MOTION DUE TO THE DEFICIENT PERFORMANCE OF THE PCR COUNSEL AND APPELLATE COUNSEL PLACED ERRONEOUS OBJECTIONS AND OPINIONS THAT A PRO SE FILED MOTION PURSUANT TO RULE 59, SCRPC WILL NOT BE RESPECTED BY THE APPELLATE COURT, AND THEREFORE SHE HAVE NO GROUNDS TO FILE THE MOTION TO DISMISS TO THE APPELLATE COURT BASED UPON A PENDING MOTION SUCH A THE 59(e) MOTION, THIS IS CLEARLY PREJUDICE AND VIOLATED APPLICANT'S DUE PROCESS RIGHTS TO A FAIR REVIEW AND TO HAVE PCR ISSUES GIVEN A SPECIFIC FINDING OF FACTS AND A SPECIFIC CONCLUSION OF LAW GIVEN TO THEM SPECIFICALLY, THAT OF WHICH IS A WELL SETTLED LAW BY OUR SC SUPREME COURT IN MARLAR V. STATE supra. THE APPLICANT HAVE PROBATIVE EVIDENCE HE DOES RELIES UPON OUTSIDE OF THE TRIAL RECORDS AND PCR RECORDS THAT OF WHICH NEITHER COUNSELS ATTEMPTED TO PROCURE AND THUS MAKING IT A FUNDAMENTAL RIGHT VIOLATED BY THE JUDICIAL PROCESSES BEING HELD AS TO THE COUNSEL ABANDON THE ROLE OF ADVOCATING FOR THE APPLICANT TO TEST THE ADVERSARIAL PROCESS TO PROVE BEYOND DOUBT AND BY THE PREPONDERANCE OF THE EVIDENCE AS HE HAS THE DUTIES AND THE BURDENS TO DO SO, AND HERE IN THIS CASE MATTER OF THE APPLICANT THIS PROCESS IS VIOLATED AND THERE IS NO WAY THAT THE COURT WILL AGREE THAT APPLICANT RECEIVED A FAIR HEARING AND A FAIR REVIEW TO HIS PCR AND FOR THE APPEAL PROCESS, THE APPELLATE COUNSEL HAS TURNED ADVERSE TOWARDS THE APPLICANT WHEN SHE FILED A JOHNSON BRIEF RAISING NO ISSUES THAT WAS RAISED AND TOTALLY OVERLOOKING THE RECORD PLACED BEFORE HER IN THE CASE MATTER, THEREFORE IT SHOWN THE COURT MUST REMAND FOR A COMPLETE AND FULL REVIEW OF THE RECORDS AND MAKE DETERMINATION OF THE RULE 59 MOTION TO BE RESOLVED. THIS IS A COMPELLING UPON THE APPLICANT SO THAT HE CAN ESTABLISH THE EXERCISING HIS RIGHT TO PROPERLY EXHAUST HIS CASE BEFORE THE COURTS AS IS REQUIRED BY THE PROPER EXHAUSTION DOCTRINE. THEREFORE IT IS RESPECTFULLY SUBMITTED TO THE HONORABLE COURT AS REQUESTED. REVERSED AND REMAND TO THE PCR COURT DUE TO THE MANY CONSTITUTION VIOLATIONS. SEE ALSO AS EXHIBITS CONSECUTIVELY NUMBERED AS RECORDS (PETITIONER'S EXHIBITS):

NOTICE OF APPEAL FILED BY CHARLES T. BROOKS, III, ESQ DATED 09/6/11;
CORRESPONDENCE TO AND FROM APPELLATE COUNSEL SUSAN HACKETT, ESQ.
OAD. VARIANCE DATES;
IMPROPER ORDER OF DISMISSAL FROM PCR; AND
RULE 59(e) MOTION, SCRPC.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO HORRY COUNTY

HON: STEVEN H. JOHN, Cir. Ct. JUDGE

CASE NO. 2011-CP-26-01414

TYRONE JACOBS, , PETITIONER,

Vs.

STATE OF S.C., , RESPONDENT.

PROOF OF SERVICE

I, TYRONE JACOBS, CERTIFY THE I SERVED A TRUE COPY OF PETITIONER'S PRO SE BRIEF TO THE CLERK OF SUPREME COURT BY WAY OF US MAIL PREPAID POSTAGE AS ADDRESSED TO HIS PUBLIC OFFICE ADDRESS AS PO BOX 11330, COLUMBIA, S.C. 29211, ON THIS 25 DAY OF June, 2012. BY PERSONALLY DELIVERING IT TO THE POSTAL DIRECTOR IN THE PRISON MAILROOM, ON THIS 25 DAY OF June 2012.

THEREFORE HAVING IT VERIFIED FOR POSTAGE AND FOR VERIFIIGN LEGAL MAIL WERE MAILED TO THE SC SUPREM COURT ON THIS 25 DAY OF June, 2012.

June 25, 2012

s/ Tyrone Jacobs
TYRONE JACOBS
LEE C.I.
990 WISACKY HWY
BISHOPVILLE, S.C. 29010
PETITIONER

SWORN TO AND BEFORE ME ON
THIS ___ DAY OF _____ 2012.

NOTARY PUBLIC
MY COMMISSION EXP: ___/___/___

STATEMENT OF CASE

PETITIONER JACOBS WAS CONVICTED FOR MURDER BY A JURY DURING THE WEEK OF MAY 19, 2008, IN HORRY COUNTY GENERAL SESSIONS COURT, BEFORE THE HONORABLE KRISTI L. HARRINGTON, HARRINGTON SENTENCED PETITIONER TO THIRTY (30) YEARS PRISON TERM, PETITIONER WAS REPRESENTED BY RALPH J. WILSON, Esq., PETITIONER FILED A DIRECT APPEAL, AND THE APPELLATE DEFENSE COUNSEL JOSEPH L. SAVITZ, III FILED AN ANDERS BRIEF PURSUANT TO ANDERS V. CALI., 386 US 738 (1967), THAT OF WHICH WAS IN VIOLATION TO PETITIONER'S CONSTITUTIONAL RIGHTS TO A DIRECT REVIEW TO ALL PROPERLY OBJECTED TO TRIAL ISSUES, THE COURT OF APPEALS ISSUED AN UNPUBLISHED OPINION TO THE DIREST APPEAL, SEE STATE V. JACOBS, OP. NO. 2010-UP-081 (SC Ct. APP. FILED 02/02/2010). PETITIONER FILED A TIMELY PCR APPLICATION AND HE WAS REPRESENTED BY CHARLES T. BROOKS, III, ESQ., WITH THE HONORABLE S.H. JOHN PRESIDING OVER THE EVIDENTIARY HEARING HELD ON AUGUST 22, 2011, THE RESPONDENT'S COUNSEL WERE CHISTINA J. CATOE, ESQ., AFTER THE COMMENCING OF THE EVIDENTIARY HEARING THE COURT ISSUED AN ORDER OF DISMISSAL ON AUGUST 30, 2011, BY TIMELY NOTICE THE PETITIONER FILED A RULE 59(e) SCRCF MOTION TO THE PCR COURT DUE TO THE FACTS THAT THE PCR COUNSEL REFUSED TO FILE IT HIMSELF, SEE ATTACHED MOTION CLOCKED FILED BY THE LOWER COURT CLERK, EXHIBITS A, DATED AS: 09/09/2012 ; THE PCR COUNSEL BROOKS WERE REQUESTED TO FILED THIS MOTION BUT HE REFUSED AND INSTEAD FILED THE NOTICE OF APPEAL TO THE SUPREME COURT, HOWEVER, THE FILING OF THE APPEAL DID NOT OVERRIDE THE PETITIONER'S RULE 59(e) MOTION DUE TO THE FACTS THAT THE MOTION WAS FILED BEFORE THE PCR COUNSEL FILED HIS NOTICE OF APPEAL, THIS IS EXCLUSIVELY IN CONFLICT OF WELL SETTLED LAWS, THE COUNSEL HERE IS EVASIVELY CAUSING DETRIMENTAL HARMS TO PETITIONER TO RECEIVE A COMPLETE AND FULL APPELLATE REVIEW TO HIS PCR CASE THAT OF WHICH PETITIONER ATTEMPTED TO SECURE AN ACCURATE PREPARED ORDER FROM THE COURT AS IN TO HAVE ALL AVAILABLE ISSUES FROM THE RECORD RAISED AND ADEQUATELY AND PROPERLY RULED UPON BY THE PCR COURT, AND IN THIS SCENARIOS THE APPELLATE COUNSEL FAILED TO YIELD TO

THE RIGHT OF WAY TO THE PETITIONER AS IN HIM EXERCISING HIS STATUTORY RIGHTS TO A FULL AND FAIR REVIEW AS IN THE ONE BITE AT THE APPLE. THEREFORE THE PETITIONER RAISES INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL DUE TO THE FACTS THAT THE APPELLATE COUNSEL FAILED TO FILED THE MOTION TO RETURN TO THE PCR COURT TO RECEIVE A SPECIFIC FINDING OF FACTS AND A SPECIFIC RULING AND CONCLUSION OF LAW GIVEN TO THE ALL AVAILABLE ISSUES TO BE RAISED TO THE PCR COURT, THE APPELLATE COUNSEL INSTEAD FILED A JOHNSON BRIEF AND IS ATTEMPTING TO MAKE PETITIONER'S PCR CASE BE PROCEDURALLY BARRED IN A LATER PHASE WHEN ATTEMPTING TO EXHAUST ALL AVAILABLE REMEDIES TO HIM IN HIS CASE, AS IS IN THE PCR CASE MATTER INITIALLY. THE FOLLOWING ARGUMENTS ARE THEREFORE SUBMITTED PURSUANT TO THE PRO SE BRIEF, AS IS DIRECTED TO FILE PER SE THE HONORABLE CLERK OF SC SUPREME COURT, THIS WILL ALSO BE SUBMITTED AS PETITIONER MOTION FOR THE COURT TO SEE THAT PETITIONER'S RIGHTS TO A FAIR AND FULL REVIEW TO HIS ISSUES IN THE PCR COURT HAS BEEN VIOLATED AND REQUEST FOR A RECONSIDERATION TO HIS CASE INCORPORATED WITH REQUEST FOR A REVERSAL AND REMAND FOR PROPER ADJUDICATION TO HIS PCR CASE IN THE POST CONVICTION COURT.

ARGUMENTS

PETITIONER JACOBS MAKES CONTENTIONS THAT THE APPELLATE COUNSEL HACKETT, DID NOT PURSUE HIS REQUEST TO HAVE A MOTION FILED TO THE APPELLATE COURT TO DISMISS APPEAL TO HIS PCR DUE TO THE FACTS THAT THERE EXISTS A RULE 59(e) MOTION PRO SE FILED BY HIM TO THE PCR COURT ONCE AFTER THE ORDER OF DISMISSAL WAS ISSUED AND AFTER THE REPETITIVE DEMANDS FOR COUNSEL BROOKS TO FILE THE RULE 59 MOTION HIMSELF, THE APPELLATE COUNSEL WAS ALSO ADVISED THAT COUNSEL BROOKS HAVE A HISTORY FOR NOT PERFORMING HIS DUTIES FOR PCR APPLICANTS THAT HE REPRESENTED IN THE PAST, AND THIS IS INFORMATION THAT IS EXCLUSIVELY PROVEN IN SEVERAL CASES IN THE PAST, HOWEVER, THE APPELLATE COUNSEL MADE IT KNOW THAT THE COURT DOES NOT RESPECT PRO SE APPLICANT'S FILED 59(e) MOTIONS, THIS IS IN FACTS CONTRADICTS THE WELL SETTLED LAWS OF MARLAR, supra. AND

PER SE BY THE MATERIAL CLAIMS THAT PETITIONER CAN TAKE POSITIONS BY ARE IF THE MOTION WAS NOT FILED THE RESPONDENT WOULD HAVE A CONTENTION TO MAKE AGAINST THE PETITIONER IF HE PURSUES FURTHER EXHAUSTION HIS CASE TO THE COURTS, THEREFORE IF THE PETITIONER DID NOT FILED HIS OWN RULE 59(e) MOTION TO THE COURT IT WOULD HAVE BARRED HIM TO DO AT A LATER TIME EVEN THOUGH THE PCR COUNSEL REFUSED TO FILE THE MOTION THE APPELLATE COUNSEL DOES HAVE THE AUTHORITY TO CAUSE THE PETITIONER TO FURTHER DEFAULT IN HIS CASE, THE APPELLATE COUNSEL WAS INEFFECTIVE FOR NOT BEING AWARE OF WELL SETTLED UPDATED LAW OF THIS STATE APPLICABLE IN THIS CASE, THE APPELLATE COUNSEL COULD NOT CAUSE THE PETITIONER TO DEFAULT IN PROPERLY PRESENTING HIS CASE FOR REVIEW BY THE APPELLATE COURT, THE PETITIONER HAD THE RESPONSIBILITY TO PROSECUTE HIS CASE WITH DUE DILIGENCE AND IT WAS THE PETITIONER'S RESPONSIBILITY TO MAKE THE COUNSEL AWARE OF THE FACT THAT HIS ISSUES WAS NOT CORRECTLY RAISED TO THE PCR COURT AND THIS COMPELLED PETITIONER TO FILE A RULE 59(e) MOTION TO THE PCR COURT, AFTER THE MOTION WAS NOT HEARD THIS EVENMORESO URGED THE PETITIONER TO SEEK THE HEARING FROM THE PCR COURT AND STOP THE APPEAL, THIS IS WHAT THE APPELLATE COUNSEL WAS CHARGED WITH UNTIL SHE BECAME HOSTILE AND ABANDON THE ROLE OF ADVOCACY TO THE AND FOR THE PETITIONER. THIS IS WHY THE APPELLATE COURT MUST FIND THAT THERE EXISTS A VIOLATION OF LAW BY THE COUNSELS AND THE COUNSEL ARE FURTHERING THEIR VIOLATION UPON THE COURT AND ATTEMPTING TO DEPRIVE THE PETITIONER OF A FAIR REVIEW AND RIGHT TO PROPERLY PRESENT HIS CASE TO THE COURTS. THEREFORE THE COURT IS COMPEL TO SEE BY ALL EVIDENCE THAT IS SUBMITTED IN ITS PROBATIVE FORMS AS IT IS ACCEPTABLE TO THE COURT. THE PETITIONER IS PROFFERING TO THE COURT LETTERS AS EXHIBITS THAT WERE ACCUMULATED FROM COUNSEL OF APPELLATE DEFENDER, THERE EXISTS THE ACTUAL DATE OF THE FILING OF THE APPEAL BY THE PCR COUNSEL AND THE ACTUAL DATE THAT THE PETITIONER FILED THE RULE 59(e) MOTION TO THE LOWER COURT, PETITIONER CAN PROPERLY SHOW THAT THE PRO SE MOTION WAS FILED WELL BEFORE THE COUNSEL FILED THE APPEAL TO THE APPELLATE COURT. THE PETITIONER ALSO PROVIDES TO THE COURT THE CORRESPONDENCE HE SENT TO HIS APPELLATE COUNSEL REQUESTING FOR HER TO FILE THE

MOTION TO HAVE HIS APPEAL DISMISS WITHOUT PREJUDICE SO THAT HE COULD SEEK PROPER REVIEWS FROM THE LOWER COURT AND THEN SECURE THE ORDER IN ITS PROPERLY FORM IN ORDER TO SECURE THE APPELLATE REVIEW OF THE ORDER OF DISMISSAL FROM THE APPELLATE COURT, THIS IS THE MATTER THAT CAUSED THE PETITIONER TO BE PREJUDICED AGAINST THE MOST, THE COUNSELS THAT THE COURT HAS APPOINTED TO HIS CASE HAS BECOME HOSTILE AND EVEN BECAME SO BOLD TO TELL HIM WHAT THEY ARE NOT GOING TO DO ON HIS CASE AND HE HAS NO SAY SO ABOUT IT ONE WAY OR THE OTHER. THE COURT MUST PLACE THIS KIND OF UNPROFESSIONAL BEHAVIOR BY THE COUNSELS UNDER STRICT SCRUTINY SO THESE TYPES OF ATTITUDES WILL BE ELIMINATED AND NOT BE A PART OF THE DUE PROCESS DEPRIVATION COMMITTED IN CASES AS SUCH AS PETITIONER'S. THIS IS THE ARGUMENT OF THE PETITIONER RESPECTFULLY SUBMITTED TO THE COURT UNDER REVIEW.

CONCLUSION

PETITIONER RESPECTFULLY DEMANDS THAT HIS CASE BE REVERSED AND REMENDED FOR A HEARING AND RESOLVING OF HIS PRO SE FILED RULE 59(e) MOTION, THE COURT IS REMINDED THAT IT IS WELL SETTLED LAW OF ITS OWN IN MARLAR V. STATE AND THIS IS THE AUTHORITY THE PETITIONER POSITIONS HIMSELF BY FOR HIS TO SEEK AND SECURE A PROPERLY PREPARED ORDER OF DISMISSAL TO HIS CASE, WITH HAVING THE COURT TO ADDRESS ALL OF HIS ISSUES AVAILABLE FROM THE COURT RECORDS, THEREFORE IT IS HEREBY REQUESTED AND SUBMITTED TO THE HONORABLE COURT FOR THE DEEM RELIEF AS REQUIRED BY LAW. IT IS WRITTEN BY THE SC SUPREME COURT, AS IT IS TO BE DONE BY THE SUPREME COURT OF THE STATE OF SC, ON THIS ___ DAY OF _____ 2012.

RESPECTFULLY SUBMITTED,

S/ 

TYRONE JACOBS

LEE C. I.

990 WISACKY HWY.

BISHOPVILLE, S.C. 29010

PETITIONER

__/__/__

①

TYRONE Jacobs # 328542
LEE Correction Institution
990 Wisocky Highway/Chc 2107
Bishopville, South Carolina 29010

SEP -9 AM 11:18

LAWIE EUGGINS-YARD
CLERK OF COURT

September 6, 2011 2011-1414

Honorable Chief Clerk Of Court
Horry County Court House

Subject: Stamped Filed Copy Of Rule 59(A) Motion
RE: TYRONE Jacobs v. State. #

Hon. Chief Clerk Of Court:

Please find enclosed a completed Rule 59 motion
for filing in this court and ask that a stamped filed copy be returned
to me

Respectfully Submitted:
Tyrone Jacobs
TYRONE Jacobs / Pro Se

cc:file
Assistant Attorney General
Per Counsel

The State Of South Carolina
Horry County Court House

SEP 9 AM 11:18

Tyrone Jacobs,

Applicant,

CLANIE HUGGINS-WARD
CLERK OF COURT

Motion To Alter OR
Amend Judgement
OF COURT

-Against-

The State Of South Carolina;

Respondent,

S. C. Civil Procedure Rule 59(A)
Honorable Circuit Court Judge

To Respondent Above-Named:

Please Take Notice, the applicant herein files this motion
Pursuant to South Carolina Civil Procedure Rule 59(A) for reasons as follows:

Question One:

Whether Appellate Counsel Was Ineffective For Not Raising
Actual Innocence On Appeal?

Applicant contends, that trial court ruling denying motion for a directed verdict motion was error of law. See, State v. Kimbrough, 46 S.E.2d 273 (1948) The evidence at trial, was insufficient to establish guilt beyond a reasonable doubt for murder. The Prosecution acknowledges, that testimony is inconsistent (Tr. Tr. PB 262 lines 23-24)

Mr. Richardson: Your honor, I agree that there were some inconsistencies.

Tr. Tr. PB 262 lines 23-24

(2)

Such acknowledgement reflects on the lack of testimony supporting a conviction. First, we can upon close examination exclude Mr. Gillins testimony as it is inconsistent with Pathologist testimony. As Mr. Gillins testified that victim was shot while crawling on Ground (Tr. Tr. PG 126; lines 17-25; PG 127; lines 1-25; PG 128; line 1-25; PG 129; lines 1-13) but according to Pathologist testimony this would contradict findings of Pathologist concerning entrance and exit wounds. (Tr. Tr. PG 230; lines 5-23). Moreover, the witness Mr. Gillins testimony is contradicted by Mr. McCullough that no Pool stick was carried in victim hand (Tr. Tr. PG 83; lines 3-6) while Mr. Gillins said it was no Pool stick in victim hand when he came outside (Tr. Tr. PG 104; lines 12-24) testimony of this witness is not supported by testimony or evidence submitted at trial (Tr. Tr. PG 85; lines 2-8; PG 176; lines 23-25; PG 177; lines 1-23). Such lack of corroboration should allow court to reject his testimony, which leaves only one witness and that testimony fails to satisfy threshold requirement under Jackson v. Virginia, 443 U.S. 307 (1979) for Guilty verdict. Accordingly, the testimony of Mr. McCullough likewise fails in all respects to show or establish any elements of "Malice Aforethought" under law. When victim and defendant had an argument (Tr. Tr. PG 46; lines 1-12; PG 47; lines 2-16) then leaves club and victim went outside where defendant was is a clear indication victim went outside armed with a weapon in his hand when they began arguing (Tr. Tr. PG 48; lines 2-25). Contrary to what state has argued at trial, the defendant was not at fault for encounter on outside of club. (Tr. Tr. PG 270; lines 18-24) or trial court findings that denied motion. (Tr. Tr. PG 263; lines 21-25; PG 264; lines 1-4) When court found that Mr. Gillins testimony that defendant stated "I'll show you what I

(3)

can do " what was mistakenly rejected by court was the victim is one who come outside where defendant had been. (Tr.Tr. PG 46 lines 1-4) and even when Mr. Mc Lullough and another man told victim too leave that alone he still went outside (Tr.Tr. PG 46 lines 4-7) too confront defendant. Furthermore, the statement referenced by court made to defendant

" Was Don't You Start that bullshit "

Tr.Tr. PG 263 lines 23-24

This testimony was mischaracterized by trial court, which was made in relation to argument between defendant and victim (Tr.Tr. PG 45 lines 1-25)

" I walked out behind him. I said, TYRONE. I said, Don't You start that bullshit in here. I said, if You do I'm going to call the Police. "

Tr.Tr. PG 79 lines 8-11

As testimony shows, this was made when defendant leaves club with owner behind him. What court failed to consider, is fact that once defendant is on outside of club his actions are legal and if victim leaves out after he defendant does. Then victim Provoked this altercation, and under theory of self-defense defendant was not at fault for this encounter on outside club. Just as easily as Prosecution says defendant could have left (Tr.Tr. PG 280 lines 14:22) same could be said of victim not leaving out of the club when asked too stay inside.

" Was talking to "Do" and he was telling "Do". Man, leave that Junk alone so I walked in and said, Yeah "Do" Leave that Junk alone... I can tell "Do" was going outside cause he nudged me, like bumped me a little bit, liked Pushed me... I heard them arguing outside "

Tr.Tr. PG 47 lines 4-16

Clearly, trial court decision is not supported by evidence of trial and is

15).

not conclusive of defendant being the aggressor or defendant wanted to kill victim as required for murder. But all inferences can be drawn, from victim going out to harm defendant. See, State v. Kimbrough, supra, Jackson v. Virginia, supra. Then it is quite odd, that trial court in its ruling on whether defendant was entitled to a self-defense charge court held that:

"Based on evidence" The court does find that there is evidence in the record from which a jury may reasonably infer that defendant did act in self-defense. Y
Tr.Tr. PG 294; lines 23-25; PG 295; lines 1

With this in mind, then court should have granted counsel motion. Once trial court acknowledges, that evidence of self-defense is clearly present then in State v. Davis, 282 S. C. 45, 317 S. E. 2d 452 (1984) the opinion of Davis has provided a substantial basis for determining that defendant was not guilty of murder. However, it must be noted prosecution failed to disprove this was not self-defense or reasonable inferences could not be drawn from the evidence it was not as prosecution characterized as "It is a cold hard murder" (Tr.Tr. PG 319; lines 17) For instance, in order for prosecution to do so, the evidence would need to show something other than fact defendant left and went outside. When testimony is lacking, that defendant told victim to come outside (Tr.Tr. PG 96; lines 12-20) and witness clearly tells of defendant leaving to avoid further altercation. (Tr.Tr. PG 90; lines 18-21) But make no mistake about it, when viewing evidence of trial it shows victim is one who wanted to prove defendant was a "Punk" and went to do just that when he left club as one witness consistently testified about at trial and corroborated by Mr. Gillins of victim going outside where the

(6)

defendant was. (Tr. Tr. PB 104 lines 7-11; PB 119 lines 5-11) Conversely, if defendant had a legal right to be on premises, and victim was told as noted too "Leave That Junk Alone" and did not then victim brought on this difficulty outside club by going out there and starting altercation.

Wherefore, Applicant Prays this court will Grant relief?

Dated: 6 day of September, 2011.

Respectfully Submitted:

Tyrone Jacobs

Tyrone Jacobs #

Lee Correction Institution

990 Wilsachy Highway 12107

Bishopville, South Carolina

29010



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 4, 2012

Mr. Tyrone Jacobs, #328542
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your case

Dear Mr. Jacobs:

I am the lawyer who will be handling your case in the Supreme Court. I will be reviewing the record of the proceedings at the PCR court to see what legal errors to present to the Supreme Court on your behalf. I will submit these in the form of a petition for writ of certiorari.

When I file the petition, I will send you a copy of all relevant hearing transcripts and material in the form of an appendix. Only information that was in front of the PCR judge can be included in the appendix.

You must be patient while the court considers your case. The process is very slow, but there is nothing I can do to speed up the process. It may be a few months before I submit a petition to the Supreme Court and at least a year after that before the Court decides your case. **Some cases take even longer.** You will be notified when the Court makes a decision and letters asking the status of your case do not speed up the process.

Please keep these points in mind. The Supreme Court can only consider the information that was before the PCR court. Any new information cannot be brought to their attention at this point. In addition, the issue must have been addressed in the PCR court's order of dismissal before it can be raised to the Supreme Court.

The court decides the case based on the written material submitted by the attorney general's office and me. It very rarely sets oral arguments, which are an opportunity for me to focus its attention on the information in the petition. If you are in prison, you cannot attend.

Mr. Tyrone Jacobs, #328542
Page 2
January 4, 2012

In addition, we are not able to visit our clients personally but feel free to call collect.

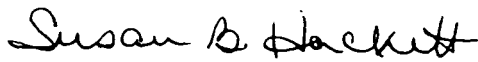

Be assured that I will try my best to find reversible error. I will submit the best petition I possibly can to the Supreme Court.

I receive a tremendous amount of mail and I may not be able to respond to all letters. However, you are free to telephone me collect. An SCDC Telephone Privilege Request has already been submitted for the following number: (803) 734-1330. This is the preferred method of us communicating. Regardless, rest assured if you write me a letter about your case, I will read it and carefully consider it as I decide which issue or issues to submit to the appellate court. Please note that the decision about which issues to submit is mine. Only if I submit a "no merits" or Johnson petition, stating that I could not find any good issues, will the court let you submit your own legal arguments.

Finally, if you are transferred to another facility or released, you must write and let me know where you are. The Department of Corrections will not notify us of your new address.

I hope this letter answers some of the questions you may have at this time. Again, please do not hesitate to contact me by letter if you have any questions or I may be of further assistance.

Sincerely,


Susan B. Hackett
Appellate Defender 

SBH/kam

Enclosure



SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 6, 2012

Tyrone Jacobs, #328542
DAR 2154
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Dear Mr. Jacobs:

Today, I received a letter from you dated January 31, 2012. In your letter, you demand that I request for your appeal to be held in abeyance pending a ruling on your pro se Rule 59(e) motion. You made this same request of me last month, and I responded that I had no basis to make such a request because your motion was not properly filed.

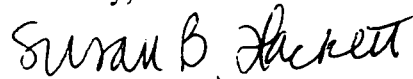
I agree that the Attorney General's office will claim that an issue is not preserved if it is not ruled upon in the order of dismissal and no Rule 59(e) motion was filed requesting that issue be reviewed. However, the fact that the Attorney General's office will make that argument does not mean that your Rule 59(e) motion is properly filed. Pursuant to South Carolina case law, your motion is not properly filed. South Carolina courts do not permit hybrid representation. You had an attorney for your PCR. Only your attorney may file motions with the court. Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010); State v. Stuckey, 3333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989). Therefore, your pro se motion is not properly filed and does not require a ruling by the circuit court. As such, I will proceed with reviewing your case and filing the appropriate pleadings.

Your letter asks me to review McKaskle v. Wiggins and Brewer v. State. I have done so. McKaskle and Brewer pro se. You were not pro se because Mr. Brooks represented you. Those cases are not applicable to your situation. I am familiar with how issues are preserved for appeal, and I am familiar with the exhaustion doctrine used by the federal courts.

Finally, your letter stated that you enclosed something. However, I received no enclosures. I received only a two page letter from you.

I understand that I am not giving you the answer you want. My understanding of the law is that your motion is not properly filed because Brooks, your attorney, did not file it. Therefore, we have no basis to request that your appeal be held in abeyance. Please do not hesitate to contact me by letter if you have any questions or I may be of further assistance.

Sincerely,



Susan B. Hackett
Appellate Defender

SBH/kam

Enclosure



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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

May 3, 2012

Mr. Tyrone Jacobs #328542
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your appeal

Dear Mr. Jacobs:

Enclosed please find a copy of the Johnson petition for writ of certiorari and a copy of the appendix in your case, which I have filed with the South Carolina Supreme Court. The Court will write to you in the future eliciting any **written memorandum** you may want to submit for the Court's consideration of your case. That memorandum should be sent to the South Carolina Supreme Court, and **not to me**. The petition to be relieved is a standard part of the Johnson procedure, it does not mean that I do not wish to represent you.

Should you have any questions concerning this matter, please contact me.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/kam

Enclosures

You as Case Counsel ~~of~~ Appellate Defense
is requested to pursue my request in this
matter as practically sound and by what
makes Constitutionally purpose, to secure a
proper exhausting remedies to per and appeals,
per Rule 204, ~~and~~ it is request that the
petition for Certiorari, be placed in abeyance
by ~~Courts~~ request per se Petitioner due to
facts that final judgement has not been passed
in his case of per. Petitioner submits the
following:

1. Petitioner filed a motion pursuant to the
Rule 59(c), ~~and~~ motion to alter/amend Final Order
of dismissal - on _____ to the Clerk of
Court in Hong Kong, the Clerk's return filed copy
makes this proof self-explanatory, in the event the
Petitioner's per Counsel (Charles T. Brock III, Esq) filed a Notice
of appeal prematurely, and his actual filing this
Notice was commenced after Petitioner's pro se filed
motion, Petitioner stands by the facts that at this
juncture, there has been no indication that a final
ruling was never issued to Petitioner's motion filed
to the lower Court as pro se, nonetheless as it stands
final judgement has not passed in this case, as a rule
a defendant may not appeal until the final judgement
State v. Robinson 287 S.C. 173, 337 S.E.2d 204 (1985), also, inasmuch
as Petitioner filed his motion per Rule 59(c), in a timely
fashion, this secured the lower Court's jurisdiction to hear
same, see Hudson v. Hudson, 390 S.C. 215, 349 S.E.2d 341 (1985).

see all pleadings copies to me soon as practical
in having my appeal placed in abeyance.

/ mark up
e

Turone Jacobs 328542
Lee CI / DA - 2154
940 Wesley Hwy
DISNEYVILLE, SC 29010

January 31, 2012

Susan B. Hackett, A.D.
Appellate Defender SCJD
P.O. Box 1589
Columbia, SC 29211-1589

Re: Responses to your letter dated: 01/20/2012. etc.. W.I. Appellant /
Petitioner's Request Assisted as excuse... etc.

Dear M. Hackett:

I respectfully demand that you submit me initial case request for an abeyance to my per appeal due to my ORG se Rule 59(c) Motion filed to the Lower Court, and as I have stated to you in my first letter to you in January my Motion have not been ruled upon and I will further state to you my motion was not filed for the fun of it...! I ask that you bring your attention to the following silent facts: you need to become aware of what type of attorney Charles Brooks is and I have attested to the fact that he is an abusive type of counsel who does not follow Law rules of professional conduct; you also need to become aware of why I had to file my motion by myself. I am fully advising you that I refuse to allow my 59(c) motion to become moot because of your excessment; you fails to see how the ORG Atty. uses all of our not doing's against me and the Courts always let the Attorney General Counsel win these types of Arguments. when the opposing attorneys say in their response the Petitioner did not filed a 59(c) motion to the Courts. it is being used against the Appellant; I also bring the most important factor you must be cancelled by and it is the proper exhaustion doctrine. I will

