

JUL 02 2026

STATE OF SOUTH CAROLINA

County of BerkeleyEmory W. Roberts Jr. 373393

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS
S.C. SUPREME COURT

APPLICATION FOR

POST-CONVICTION RELIEF

2024-CP-08-01349**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Berkeley County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Justin Gordon Hunter, Lessian
Dixon Johnson, William Brown, Rosemary Quezada
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-47-02, Trafficking in illegal drugs, distribution of
 - (b) heroin, (dist). P.W.I.D. Methamphetamine, Possession of a firearm
during commission of or attempt to commit a violent crime.

OC: E.W. Roberts
7/2/2020

INVOICE

5.90 The date upon which sentence was imposed and the terms of the sentence:

- (a) July 28, 2017
- (b) Sentences to be concurrent
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. South Carolina Court of Appeals
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. Affirmed
- ii. _____
- iii. _____

(c) the date of each such result:

- i. N/A
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. N/A
- ii. _____
- iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Denied 6th and 14th Amend. to be informed of nature and cause
 - (b) Judicial Misconduct, Ineffective assistance of Counsel
 - (c) Prosecutorial Misconduct
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Denied "Notice", Trial Court exceeded its jurisdiction to impose sentence
 - (b) Trial judge committed "Fraud on the Court", Trial Counsel conspired with
 - (c) prosecution on unfounded offenses, Prosecutors impaired grand jury's independent
role
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. Petition Writ of Mandamus, Motion To Vacate,
 - ii. 60 B(4) Motion
 - iii. Motion Newly Discovered Evidence
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. South Carolina Supreme Court (Columbia), Berkeley County (Moncks Corner)
 - ii. South Carolina Court of Appeal (Columbia)
 - iii. _____
 - iv. _____

(c) the disposition thereof:

- i. (Not heard because represented by counsel)
- ii. Berkley County stated: Not A Berkley County Case (Court File)
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. (All Grounds)
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Ineffective Assistance Assistance of Counsel (Trial)
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
(b) _____
(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
(b) your trial, if any? ✓ Yes
(c) your sentencing? ✓ Yes
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓ Yes
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Timothy L. Griffith
360 West Westmark Blvd, 2nd Floor, Sumter, SC 29150
ii. Eleanor Cherry (Address not known)

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Timothy L. Griffith (Trial) (Sentencing)

ii. Eleanor Cherry (None)

iii. _____

19. State clearly the relief you seek in filing this application:

For sentence to be vacated and indictment dismissed
with prejudice.

Briefs/Motion moving Court pursuant to § 17-27-20 to be heard and charges dismissed

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Ridgeville)

VERIFICATION

20 JUL -2 PM 12:30
CLERK OF COURT
SOUTH CAROLINA

I, Emory W. Roberts Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Emory Warren Roberts Jr.
Emory Warren Roberts

SWORN to and subscribed before me this 15th
day of JUNE, 2020

Linda K. Bush (L.S.)
Notary Public

My Commission Expires: 6-20-20

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Emory W. Roberts Jr., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Emory Warren Roberts Jr.
Applicant

SWORN or affirmed to and subscribed before me this
15th day of JUNE, 2020.

[Signature]
Notary Public

My Commission Expires: 6-20-26

JUL 20 2020
CLERK OF COURT
BENNETT COUNTY, SC

Sentencing Court's Copy

Dated: 6/15/20

Clerk of Court, Leah Guerry Dupree
Berkeley County Court of General Sessions

As I have been prejudiced my first Amendment rights to a "Redress of Grievances" by this Court and Clerk of Court, it should be noted: Pursuant to 42 U.S.C.A. § 1983 "Every person who, under color of any State statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia subjects, or causes to be subjected, any citizen of the U.S. to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity."

No local rule of court, administrative order, policy, or other procedure can take precedent over statutory law, which is always controlling. See S.C. Constitution Art. V, § 1, and § 4, also State V. Cottingham, 77 S.E. 2d 897, 224 S.C. 81 (1953).

Statutes override rules of court if in conflict; State V. Duncan, 264 S.E. 2d 421 (S.C. 1980) circuit court rule promulgated by individual Judicial Circuit was unconstitutional and void.

Hence, the Clerk of Court is required to know and obey the legal mandates.

Accordingly, I ask that my "pro se" motion pursuant to § 17-27-20 and 28 U.S.C. § 2255, be clocked, dated, stamped, and filed, and returned the same to petitioner.

JUL 02 2026

STATE OF SOUTH CAROLINA

County of BerkeleyEmory W. Roberts Jr.

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

S.C. SUPREME COURT

(Subsequent Application)APPLICATION FOR
POST-CONVICTION21 MAY 13 PM 3:41
LEAH QUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

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1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Berkeley County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Justin Hunter, Rosemary Quezada,
Lessian Johnson, William Brown
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: (2016-BS-47-02)

(a) S.C. Code Ann. §§ 44-53-370(e)(3)(A); 44-53-370(b)(1);(b) 44-53-370(e)(3)(A); 16-23-490; 44-53-375(B)

Copies sent
E.W. Roberts Jr.
(82) 5/13/2021

(c)

5. The date upon which sentence was imposed and the terms of the sentence:

(a) July 28, 2017

(b)

(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. South Carolina Supreme Court

iii.

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. No Action Taken Because "Represented" By Counsel

iii.

(c) the date of each such result:

i. January 29, 2020

ii.

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii.

iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a)

(b)

(c)

10.

State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: (Conspiracy against public justice) Brady v. Mis - (Corruption) 6th Amend. right nature case

See Reverse
Page 2 for
answers to # 10.

(a)

See Briefs 1-9 (Attached); Prosecutorial Conduct; Fraud upon Court;

(b)

Judicial Misconduct; Ineffective Assistance of Counsel; Perjury;

(c)

Lack of subject-matter jurisdiction to convict; due process violations; Ineffective appellate Counsel; trial court error; want of indictment, etc.

11.

State concisely and in the same order the facts which support each of the grounds set out in (10):

(a)

The facts which support each ground set out in (10) is marked Exhibit C

(b)

in attachments; Exhibit B; Exhibit D; Exhibit F; Exhibit G;

(c)

Exhibit H; Exhibit I; Exhibit J. (Emphasis).

12.

Prior to this application have you filed with respect to this conviction:

(a)

any petition in a State Court under South Carolina Law? (Mandamus)

(b)

any petition in State or Federal Courts for habeas corpus or post-convictions relief?

(c)

any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)?

(d)

any other petitions, motions or applications in this or any other Court? Yes

13.

If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a)

the specific nature thereof:

i.

Fraud upon the Court; Violations of Art. I, Section 11; Violations

ii.

of Art. 5, Section 22; Violations of 1st Amend. Right to Redress Grievances;

iii.

lack of subject-matter jurisdiction; violation of Art. 15 State Grand Jury Act;

iv.

Violation of 6th Amend. right to be informed of nature and cause; Conspiracy; etc.

(b)

the name and location of the Court in which each was filed:

i.

S.C. Supreme Court

ii.

SC Court of Appeals, 1220 Senate Street, Columbia, South Carolina 29201

iii.

Berkeley County Court of General Sessions (2020-CP-08-01349)

iv.

Richland County Clerk of Court (See exhibit H)

(c) the disposition thereof:

- i. Defendant was represented by counsel and no action was taken or (pro se)-filing
- ii. (2020-CP-08-01349) Dismissed based on pending appeal
- iii. (Newly Discovered Evidence Motion) Refused to clock or file (See Exhibit I)
- iv.

(d) the date of each such disposition:

- i. August 16, 2017, March 7, 2018; Jan. 31, 2018
- ii. S.C. Supreme Court (July 23, 2018) (April 2, 2019)
- iii.
- iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N.A.
- ii.
- iii.
- iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

E.R. ~~Not previously presented~~ "Yes"

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Subject Matter Jurisdiction
- ii. (All Grounds) Violations of Brady, Art. 1-§ 11; Art. 5§ 22;
- iii. Right to self-rep.; Prosecutorial misconduct; Fraud upon the Court; unlawful conviction; Violation of § 14-7-1900 and right to prepare a defense; Judicial Misconduct; ineffective assistance of counsel etc.

(b) the proceedings in which each ground was raised:

- i. Appeal
- ii. Mandamus
- iii. Initial P.C.R. Filing (2020-CP-08-01349)

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
(b) _____
(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
(b) your trial, if any? Yes
(c) your sentencing? Yes
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Timothy Griffith, 360 West Westmark Blvd. 2nd Floor
Sumter, SC 29150.

ii. Susan B. Hockett (S.C. Court of Appeals)

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Timothy Griffith (Trial)

ii. Susan B. Hockett (Appeal)

iii. _____

19. State clearly the relief you seek in filing this application:

Applicant seeks to have his sentences vacated and the
indictment dismissed with prejudice and to be released
immediately, As defendant suffers continuing collateral consequences.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Berkeley)

VERIFICATION

FILED
21 MAY 13 PM 3:42
LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

I, Emory W. Roberts Jr., being duly sworn
upon my oath, depose and say that I have subscribed to the foregoing application; that I know the
contents thereof; that it includes every ground known to me for vacating, setting aside or
correcting the conviction and sentence attacked in this application; and that the matters and
allegations therein set forth are true.

Emory W. Roberts Jr.

SWORN to and subscribed before me this 1st
day of April, 2021.

Lish K. Be (L.S.)
Notary Public

My Commission Expires: 6-20-26

RECEIVED

JUL 02 2026

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Emory W. Roberts, Jr., #373393,
Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2020-CP-08-01349

**AMENDED RETURN AND PARTIAL
MOTION TO DISMISS THE
APPLICATION FOR POST-
CONVICTION RELIEF**
(Counsel Already Appointed)

Respondent the State of South Carolina, making its amended return to the application for post-conviction relief filed by Applicant Emory W. Roberts, Jr. on July 21, 2020, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined within the South Carolina Department of Corrections. In April 2016, the South Carolina State Grand Jury indicted Applicant and five co-conspirators under a multi-count indictment stemming from an investigation into a drug trafficking ring throughout Dorchester and Berkeley Counties (2016-GS-47-02). Under this indictment, Applicant was indicted for one count of trafficking in heroin of twenty eight grams or more, three counts of distribution of heroin, one count of trafficking in heroin between four and fourteen grams, one count of possession with intent to distribute methamphetamine, and one count of possession of a firearm during the commission of a violent crime.

On July 19, 2017, Applicant appeared before the Honorable Deadra L. Jefferson, circuit court judge, for pre-trial motions hearings alongside appointed counsel Timothy L. Griffith, Esquire. Thereafter, on July 24-28, 2017, Applicant and co-conspirator Justin Hunter (Hunter) proceeded to a jury trial with Judge Jefferson presiding. Applicant was again represented by Counsel Griffith. The State was represented by Assistant Attorneys General Joshua Underwood

cc: Email
M. Gomez
2/4/2021

UNRECORDED

2020 08 10

UNRECORDED

and David Fernandez of the South Carolina Attorney General's Office. Hunter was not present for trial and was tried in his absence with Theresa Johns, Esquire, representing him.

At the conclusion of trial, the jury convicted Applicant of all counts. Following the verdict, Judge Jefferson sentenced Applicant to twenty-five years' imprisonment for trafficking in heroin of twenty eight grams or more, fifteen years' imprisonment for each count of distribution of heroin, fifteen years' imprisonment for trafficking in heroin four grams to fourteen grams, five years' imprisonment for possession of a weapon during the commission of a violent crime, and fifteen years' imprisonment for possession with intent to distribute methamphetamine. All of Applicant's sentences ran concurrently with each other, resulting in an aggregate total of twenty-five years' imprisonment.

Applicant timely appealed his convictions and was represented on appeal by Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense—Office of Appellate Defense. On appeal, Applicant asserted the trial court violated his constitutional rights by denying his right to self-representation. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences on January 29, 2020. *State v. Roberts*, Op. No. 2020-UP-017 (S.C. Ct. App. filed January 29, 2020). On February 13, 2020, Applicant filed a Petition for Rehearing with the Court of Appeals. The Court of Appeals denied the Petition for Rehearing on March 27, 2020. Applicant then filed a petition for a writ of certiorari with the South Carolina Supreme Court on April 24, 2020. The State filed its return to the petition for writ of certiorari on May 6, 2020. On October 16, 2020, the Supreme Court denied certiorari. The Remittitur was returned to the circuit court on October 19, 2020.

While Applicant's direct appeal was pending, he filed this instant post-conviction relief action on July 21, 2020. Respondent moved to dismiss the application without prejudice because

his direct appeal was still pending before the South Carolina Supreme Court. *See* Rule 71.1, SCRCRCP (“An application for post-conviction relief cannot be made while an appeal from the conviction or sentence is pending or during the time in which an appeal may be perfected.”). Respondent submitted a proposed order of dismissal without prejudice at the same time to the chief administrative judge for common pleas. This order was neither signed nor acknowledged by the court.

Now that Applicant’s direct appeal has concluded, Respondent makes the following amended return to the application and requests an evidentiary hearing to resolve the issues as set forth in the application, as will be addressed below.

II. ALLEGATIONS RAISED IN THE APPLICATION FOR POST-CONVICTION RELIEF

On July 21, 2020, while his direct appeal was still pending on a petition for writ of certiorari to the South Carolina Supreme Court, Applicant filed this instant post-conviction relief action, alleging:

- Ineffective assistance of counsel, specifically, that counsel “conspired with the prosecution on unfounded offenses”
- Prosecutorial misconduct, specifically, that prosecutors “impaired grand jury’s independent role”
- Judicial misconduct, specifically, “trial judge committed ‘fraud upon the court’ and “exceeded its jurisdiction to impose sentence”

As requested relief, Applicant states he is seeking his sentences to be vacated and the indictment dismissed with prejudice.

Respondent previously filed a return, with various attachments including the State Grand Jury Clerk of Court Records regarding the Applicant’s case, the Applicant’s records from the South Carolina Department of Corrections, the trial transcript, the records from Applicant’s direct appeal, and the current application for relief. Respondent reserves the right to amend this

return based upon receipt of additional relevant information.

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Applicant asserts trial counsel was ineffective in his representation of Applicant. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney's performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690-95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the

range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth

Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside

the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough "to show the errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose

result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

In conclusion, Respondent submits Applicant cannot satisfy either requirement of the *Strickland* test for any of this various claims of ineffective assistance of counsel. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. RESPONSE TO ALLEGATIONS OF PROSECUTORIAL MISCONDUCT

Applicant further raises claims of prosecutorial misconduct, specifically, that the prosecutors impaired the grand jury’s role. However, Applicant asserts he raised these concerns to the trial court prior to trial and the issues were denied, and accordingly, these issues should have been raised on direct appeal.

- Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Here, as Applicant raised these issues prior to trial, he could have raised these issues on

direct appeal. The failure to do so has waived this allegation as grounds for relief. *See Stepney v. State*, 278 S.C. 47, 292 S.E.2d 41 (1982) (issues that could have been raised on direct appeal cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel). Regardless, it is applicant's burden to prove actual prosecutorial misconduct. *Alabama v. Smith*, 490 U.S. 794 (1989). Notwithstanding the procedural bar to this claim, Applicant provides no evidence to suggest prosecutorial impropriety. Therefore, this allegation should be summarily dismissed

V. RESPONSE TO ALLEGATIONS OF TRIAL COURT MISCONDUCT

Applicant further raises claims of trial court misconduct. Again, these are issues that could have and should have been pursued on direct appeal. Post-conviction relief is not a substitute for an appeal. *Simmons*, 264 S.C. at 423, 215 S.E.2d at 885. A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. *Drayton*, 312 S.C. at 8, 430 S.E.2d at 520. Therefore, this allegation should be summarily dismissed

VII. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue

the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCPP; *see also* Rules 15(a)-(b), SCRCPP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCPP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VII. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VIII. CONCLUSION

WHEREFORE, Respondent respectfully requests this Court summarily dismiss the allegations of prosecutorial misconduct and trial court error and convene an evidentiary hearing on the allegation of ineffective assistance of counsel.

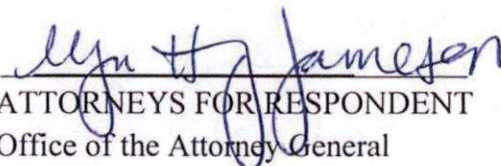
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Feb. 1st, 2021

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Emory Roberts, #373393

Applicant,

vs

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS

2020-CP-08-01349

CERTIFICATE OF SERVICE BY MAIL

LEAH GUERRY DUPREE
CLERK OF COURT
BERKELEY COUNTY, SC

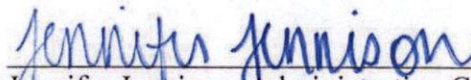
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FILED

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Amended Return and Partial Motion to Dismiss the Application for Post-Conviction Relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher L. Murphy, Esquire
Murphy Law Offices, LLC
146 Fairchild Street, Suite 130
Charleston, SC 29492

DATED this 1st day of February, 2021.



Jennifer Jennison, Administrative Coordinator
For Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

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IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Emory W. Roberts, Jr., #373393,

Applicant, BERKELEY COUNTY, SC

Case No.: 2020-CP-08-01349

v.

State of South Carolina,
Respondent.

RETURN AND MOTION TO
DISMISS WITHOUT PREJUDICE
(Appointment of Counsel Not Requested)

The State (Respondent), making its return to the application for post-conviction relief filed by Emory W. Roberts, Jr. (Applicant) on July 21, 2020, would respectfully show this Court:

I. Procedural History

Applicant is presently confined within the South Carolina Department of Corrections. In April 2016, the South Carolina State Grand Jury indicted Applicant and five co-conspirators under a multi-count indictment stemming from an investigation into a drug trafficking ring throughout Dorchester and Berkeley Counties (2016-GS-47-02). Under this indictment, Applicant was indicted for one count of trafficking in heroin of twenty eight grams or more, three counts of distribution of heroin, one count of trafficking in heroin between four and fourteen grams, one count of possession with intent to distribute methamphetamine, and one count of possession of a firearm during the commission of a violent crime.

On July 19, 2017, Applicant appeared before the Honorable Deadra L. Jefferson, circuit court judge, for pre-trial motions hearings alongside appointed counsel Timothy L. Griffith, Esquire. Thereafter, on July 24-28, 2017, Applicant and co-conspirator Justin Hunter (Hunter) proceeded to trial before a jury on all counts in the Berkeley County Court of General Sessions with Judge Jefferson, presiding. Applicant was again represented by Counsel Griffith. The State was represented by Assistant Attorneys General Joshua Underwood and David Fernandez of the South Carolina Attorney General's Office. Hunter was not present for trial and was tried in his

CC: M. H. Jameson
Jameson

absent with Theresa Johns, Esquire, representing him.

At the conclusion of trial, the jury convicted Applicant of all counts. Following the verdict, Judge Jefferson sentenced Applicant to twenty-five years' imprisonment for trafficking in heroin of twenty eight grams or more, fifteen years' imprisonment for each count of distribution of heroin, fifteen years' imprisonment for trafficking in heroin four grams to fourteen grams, five years' imprisonment for possession of a weapon during the commission of a violent crime, and fifteen years' imprisonment for possession with intent to distribute methamphetamine. All of Applicant's sentences ran concurrently with each other, resulting in an aggregate total of twenty-five years' imprisonment.

Applicant timely appealed his convictions and sentences and this direct appeal is still pending. He is represented on appeal by Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense—Office of Appellate Defense. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences on January 29, 2020. State v. Roberts, Op. No. 2020-UP-017 (S.C. Ct. App. filed January 29, 2020). On February 13, 2020, Applicant filed a Petition for Rehearing with the Court of Appeals. The Court of Appeals denied the Petition for Rehearing on March 27, 2020. Applicant then filed a petition for a writ of certiorari with the South Carolina Supreme Court on April 24, 2020. The State filed its return to the petition for writ of certiorari on May 6, 2020. This certiorari petition is still pending before the Supreme Court.

II. Allegations Raised in the Application for Post-Conviction Relief

On July 21, 2020, while his direct appeal was still pending on a petition for writ of certiorari to the South Carolina Supreme Court, Applicant filed this instant post-conviction relief action, alleging numerous grounds of trial court error, ineffective assistance of counsel, due

process violations, and prosecutorial misconduct. As requested relief, Applicant states he is seeking his sentences to be vacated and the indictment dismissed with prejudice.

Attached to this return and incorporated by reference are the State Grand Jury Clerk of Court Records regarding the Applicant's case, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, the records from Applicant's direct appeal, and the current application for relief. Respondent reserves the right to amend this return based upon receipt of additional relevant information.

III. Motion for Summary Dismissal without Prejudice

Respondent moves for summary dismissal without prejudice pursuant to section 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing, as Applicant's direct appeal is still pending and accordingly, this post-conviction relief action is premature. Because there is no question of law or fact to necessitate a hearing, Respondent requests the Court not appoint counsel in this matter, and instead issue an order of dismissal indicating the Court's intent to dismiss the application and its reasons for so doing.¹ See S.C. Code Ann. § 17-27-70 (establishing procedure for summary disposition of PCR applications); Leamon v. State, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court, S.C. Sup. Ct. Order filed October 6, 2008; Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). Respondent moves for summary dismissal for the following reasons:

¹ A proposed Order of Dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration.

Summary Dismissal Based On Pending Direct Appeal

Respondent moves to summarily dismiss the application because his direct appeal is still pending before the South Carolina Supreme Court. Pursuant to Rule 71.1, SCRCP, "[a]n application for post-conviction relief cannot be made while an appeal from the conviction or sentence is pending or during the time in which an appeal may be perfected." Accordingly, Respondent moves to dismiss the present application without prejudice, with leave for Applicant file a new application for post-conviction relief should be not prevail on direct appeal.

IV. Other Allegations Denied

Each and every other allegation in the Applicant's application not explicitly admitted, qualified, or explain in this Return is hereby denied by the Respondent.

V. Conclusion

WHEREFORE, Respondent moves to summarily dismiss the application without prejudice pursuant to Rule 71.1, SCRCP, based on Applicant's pending direct appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: s/ Megan Harrigan Jameson
ATTORNEYS FOR RESPONDENT

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July 31, 2020

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Emory W. Roberts, Jr. #373393,

Applicant,

v.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT S.C. SUPREME COURT

Case No.: 2020-CP-08-01349

ORDER OF DISMISSAL

FILED
2024 AUG 29 PM 12:48
LEAH GUERRY DUPRE
CLERK OF COURT
BERKELEY COUNTY, S.C.

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Emory W. Roberts (Applicant) on July 2, 2020. Respondent made its return requesting an evidentiary hearing. On April 18, 2023, an evidentiary hearing convened before the Honorable R. Kirk Griffin. Applicant was present and proceeded pro se.¹ Assistant Deputy Attorney General Taylor Z. Smith represented Respondent. At the hearing, the Court heard testimony from trial counsel Timothy L. Griffith, Esquire; SLED Agent Justin Wingo; Appellate Defender Susan Hackett; Assistant Attorney General Joshua Underwood; and Assistant Attorney General David Fernandez. Following a thorough review of the records before this Court and the testimony presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the Department of Corrections serving an aggregate twenty-five-year sentence. In April 2016, the South Carolina State Grand Jury indicted Applicant and five co-conspirators under a multi-count indictment stemming from an investigation into a

¹ Applicant was previously appointed counsel, but counsel was relieved at Applicant's request, and Applicant was permitted to proceed pro se.

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2018 SUPREME COURT

drug trafficking ring throughout Dorchester and Berkeley Counties (2016-GS-47-02). Applicant was indicted for trafficking heroin, twenty-eight grams or more; trafficking heroin, between four and fourteen grams; three counts of distribution of heroin; one count of possession with intent to distribute (PWID) methamphetamine, and one count of possession of a firearm during the commission of a violent crime.

On November 24-28, 2017, Applicant and codefendant Justin Hunter² proceeded to a jury trial before the Honorable Deadra L. Jefferson. Timothy Griffin, Esquire, represented Applicant, and Assistant Attorney Generals Joshua Underwood and David Fernandez prosecuted the case. The jury convicted Applicant as indicted, and Judge Jefferson sentenced him to concurrent terms of twenty-five years for trafficking heroin, twenty-eight grams or more; fifteen years for each distribution of heroin charge; fifteen years for trafficking in heroin, four grams to fourteen grams; fifteen years for PWID methamphetamine; and five years for the weapon charge.

Applicant filed a notice of appeal, which was perfected by Appellate Defender Susan B. Hackett. On appeal, Applicant argued the trial court violated his right to self-representation by denying his request to proceed pro se. The Court of Appeals affirmed on the merits. State v. Roberts, 2020-UP-017 (filed January 29, 2020). Applicant filed a petition for a rehearing, which was denied. Applicant also filed a petition for a writ of certiorari in the Supreme Court of South Carolina, which was denied. The remittitur was sent October 19, 2020.

CURRENT APPLICATION

On June 2, 2020, Applicant filed this PCR application alleging:³

² Hunter was tried in his absence; he was represented by Theresa Johns, Esquire.

³ Applicant filed this application while his direct appeal was pending, and the State initially filed a return and motion to dismiss without prejudice due to the pending appeal. However, after the remittitur was sent, the State filed an amended application requesting an evidentiary hearing.

1. Denied 6th and 14th Amendment to be informed of nature and cause: Denied notice;
2. Judicial misconduct: trial court exceeded its jurisdiction to impose sentence, trial court committed 'fraud on the court';
3. Ineffective assistance of counsel: Trial counsel conspired with prosecution on unfounded offenses;
4. Prosecutorial misconduct: prosecutor impaired grand jury's independent role.

As relief, Applicant requested "For sentence to be vacated and indictment dismissed with prejudice." Applicant attached to his application a "brief" further addressing his claims.

On May 13, 2021, Applicant filed a "subsequent application," which this Court construes as an amended application. In this application, he alleged:

- a. Conspiracy against public justice;
- b. Corruption;
- c. Prosecutorial misconduct – Brady violation;
- d. Fraud upon the Court;
- e. Judicial Misconduct;
- f. Ineffective assistance of counsel;
- g. Perjury;
- h. Lack of subject matter jurisdiction to convict;
- i. Due process violations;
- j. Ineffective appellate counsel;
- k. Trial court error;
- l. Lack of indictment, etc.

Applicant attached nine "briefs" to his application in support of his claims. At the PCR hearing,

he focused primarily on his claim that the State Grand Jury did not meet to indict him and the Court thus lacked subject matter jurisdiction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the State Grand Jury Clerk of Court records of the underlying convictions; Applicant's records from the South Carolina Department of Corrections; the trial transcript, the records of Applicant's direct appeal; and the records of this PCR application. This Court has further had the opportunity to observe the witnesses presented at the PCR hearing, closely pass upon their credibility, and weigh their testimony accordingly.⁴ After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Due process violation

Applicant first raises a due process violation. Specifically, he contends he was denied notice of his charges. In his initial application, he poses the following "questions," which this Court construes as allegations related to his claim of a due process violation:

1. Whether defendant's right to due process of law and equal protections under the law to be informed of the nature and cause of accusation [was] violated when no State Grand Jury convened to consider criminal allegations against him?
2. Whether defendant's right to due process of law was violated when he was held for trial and convicted of crimes and offenses without indictment by grand jury?
3. Whether defendant's right to due process and equal protections under the law and his right to have the indictment issued by a legally

⁴ This Court will reference PCR testimony where relevant below.

constituted Grand Jury was violated?

4. Whether the State Grand jury lacked subject matter jurisdiction based on nullity indictment?

5. Whether defendant's right to due process of law and equal protections under the law was violated when no court reporter was assigned to record Grand Jury proceedings?

6. Whether defendant's right to due process of law and equal protections under the law [was] violated when defendant was denied the empanelment documents before a jury being sworn?

7. Whether defendant's right to due process of law and equal protections under the law was violated when prosecutor encouraged false testimony and defendant was accused of crimes not investigated by a Grand Jury, and AAGs allowed government agents to make false and misleading statements prejudicing defendant?

9. Whether the Court lacked subject matter jurisdiction to convict and sentence defendant for offenses for which he was not indicted?

10. Whether prosecutor's return of fraudulent indictment constitutes fraud upon the court and defendant's rights?

11. Whether a State Grand jury convened in Petitioner's case on the dates of April 12-13, 2016?

Applicant repeats many of these arguments in his Amended Application and nine "briefs" attached to this application. In addition, he raises the following arguments pertinent to due process:

12. Whether defendant's due process of law and equal protections under the law violated when he was not able to mount or prepare a defense due to prosecutor's misconduct and trial judge's prejudicial ruling?

13. Whether trial court violated defendant's due process of law and equal protections under the law when trial judge relieved prosecution's 'burden of proof' to explain why the 'impanelment documents' should not be released pursuant to Rule 5(d)?

14. Whether defendant's rights pursuant to §§ 17-7-1610 and 14-7-1630(A)(1), and defendant's due process of law, violated when he was 'infringed' his right to challenge the subject matter jurisdiction

of the State Grand Jury?

15. Whether the denial of impanelment documents constitutes a structural error?

16. Whether trial court lacked subject matter jurisdiction to “convict” and “sentence” defendant on unindicted offenses in violation of § 17-19-10, §17-25-10, and defendant’s right to due process of law and equal protections under the law? (Br. 3, pg. 1)

17. Whether trial court violated State Constitution and defendant’s due process of law and equal protection under the law, when defendant was denied his infringed right to challenge whether a legally constituted grand jury considered his case? (Br. 3, pg. 1)

18. Whether defendant’s due process of law violated when prosecution did not meet its burden of production on every element of the offense? (Br. 5, pg. 2)

19. Whether defendant’s right to due process of law violated when trial judge, trial counsel, Assistant Attorney Generals, and State Grand Jury Clerk committed conspiracy against public policy? (Br. 6, pg. 3)

20. Whether defendant was denied due process of law when he infringed his right to challenge the sufficiency of the evidence presented at the Grand Jury proceeding? (Br. 6, pg. 4)

21. Whether the State failed to prove beyond a reasonable doubt that the amount of heroin or any mixture containing heroin was 4 grams or more but less than 14 grams; 14 grams or more but less than 28 grams; and 28 grams or more? And whether this violated defendant’s due process of law? (Br. 8, pg. 2)

22. Whether defendant’s right to due process of law violated when all essential elements of guilt (purchase, or brought into this State) were not proven beyond a reasonable doubt? And whether the defendant suffered prejudice? (Br. 8, pg. 2)

23. Whether a rational trier of fact, viewing evidence in light most favorable to the prosecution, could have found the essential elements of the crime of trafficking heroin beyond a reasonable doubt?

This Court finds Applicant has not shown a due process violation.

Sufficiency of Indictment and meeting of State Grand Jury

This Court finds Applicant had sufficient notice of the charges and has failed to show a due process violation in this regard. Initially, this Court has reviewed the indictment in this case and finds it was sufficient to put Applicant on notice of the charges against him. See Evans v. State, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005) (“The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted. This required notice is a component of the due process that is accorded every criminal defendant.” (internal citations omitted)).

Many of Applicant’s claims center on his belief that the State Grand Jury did not meet and did not indict him. However, this Court finds credible the PCR testimony of Assistant Attorney General Joshua Underwood, who testified he was present when the State Grand Jury met and indicted Applicant. (PCR Tr. 121, 123, 127). Applicant has not presented any credible evidence that the grand jury proceeding was irregular, and this Court finds the State Grand Jury did in fact meet and indict Applicant. Thus, allegations 1, 2, 3, 4, 9, 10, 11, 16, and 17, as set forth above, lack merit and are denied.⁵

⁵ Applicant’s numerous arguments related to the trial court’s lack of subject matter jurisdiction also patently lack merit. See State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”). Evans, 363 S.C. at 508, 611 S.E.2d at 517 (“In Gentry, then, we returned to our earlier view that an indictment is a “notice document,” albeit one required by our state constitution and statutes.”); id. (“The sufficiency of an indictment will no longer be considered an issue of subject matter jurisdiction.”).

Likewise, the State Grand Jury had jurisdiction to issue this indictment, which involved a drug ring located in Berkeley and Dorchester Counties; thus, allegation 14 as set forth above is denied. See S.C. Code Ann.

In arguing the State Grand Jury did not convene to indict him, Applicant relies on a letter addressed to Applicant from Court Administration that stated,

Your inquiry has been received by this office. The convening of the State Grand Jury is not dependent upon a term of General Sessions court and often does not meet at the same time as General Sessions terms. You are requesting a transcript from State Grand Jury proceedings. This is to advise that there is no court reporter assigned to record Grand Jury proceedings, and therefore, there is no transcript available.

However, at the PCR hearing, Underwood explained the State Grand Jury had a contract with Creel Reporting for transcription, which was separate from Court Administration, and the method for obtaining that transcript would be to go directly to the Court Reporter with Creel Reporting to obtain copies. (PCR 122-23). Based on Underwood's foregoing testimony, which this Court finds credible, this Court finds the letter from Court Administration is NOT proof that a transcript of this State Grand Jury proceeding did not exist. Rather, Court Administration did not have the transcript because Court Administration does not handle transcripts of State Grand Jury proceedings. Ultimately, Applicant has NOT provided clear evidence that the State Grand Jury proceeding was irregular and thus has not proven a due process violation. See Evans, 363 S.C. at 514, 611 S.E.2d at 520 ("The regularity of grand jury proceedings is presumed absent clear evidence to the contrary.").

Empanelment documents

Applicant also raises several due process claims related to the purported denial of the State Grand Jury's empanelment documents. In support, he references a portion of the trial transcript

§ 14-7-1630(A)(1) (providing the State Grand Jury has jurisdiction over "a crime involving narcotics, dangerous drugs, or controlled substances, or a crime arising out of or in connection with a crime involving narcotics, dangerous drugs, or controlled substances . . . if the crime is of a multi-county nature or has transpired or is transpiring or has significance in more than one county of this State.").

wherein he requested Rule 5 discovery—specifically audios and tapes⁶—and a transcript of the Grand Jury proceedings. (Trial Tr. 14-23, 85). However, Applicant did not produce any evidence that he timely requested the empanelment documents. See Evans, 363 S.C. at 504, 611 S.E.2d at 515 (2005) (“[W]e conclude impanelment documents, including the State’s petition, supporting materials, and the impaneling judge’s order, may be released to a defendant prior to trial upon timely request or to an applicant in a PCR proceeding.”).⁷ Critically, Underwood testified he provided trial counsel information about how to obtain the State Grand Jury transcripts; he did not withhold any discovery from Applicant or his counsel; he did not conceal the State Grand Jury empanelment documents from Applicant; and the empanelment documents were available for trial counsel’s review. (Tr. 122-23, 128). This Court finds Underwood’s foregoing testimony credible. Likewise, trial counsel credibly testified he received the indictments and discovery, and he did not believe he needed the impanelment documents to prepare a defense. (PCR Tr. 19). In the absence of a timely request, Applicant’s due process rights were not violated by the State’s alleged failure to provide the empanelment documents. Thus, allegations 6, 12, 13, and 15,⁸ as set forth above, are denied.

⁶ At trial, trial counsel relayed he had received the Rule 5 discovery and reviewed it with Applicant. (Trial Tr. 213). Additionally, the Court provided counsel time to review discovery with Applicant the first day of trial. (Trial Tr. 14, 75-76, 80). Further, this Court finds credible Underwood’s PCR testimony that he provided discovery to counsel and apprised counsel on the procedure for requesting the State Grand Jury transcripts. This Court likewise finds credible trial counsel’s PCR testimony that he received and reviewed discovery with Applicant. (PCR 20).

⁷ Although Applicant could have obtained the empanelment documents during the pendency of the PCR action, Applicant did not introduce any empanelment documents at the PCR hearing.

⁸ Likewise, any alleged “denial” of the impanelment documents does not constitute a structural error. See Carrier v. State, 441 S.C. 547, 895 S.E.2d 679 (2023) (finding misnomer on indictment did not constitute structural error).

Sufficiency of Evidence (18, 20, 21, 22, 23)

Finally, Applicant raises several claims related to the sufficiency of the State's evidence. Initially, counsel moved for a directed verdict, and any issue regarding the sufficiency of the evidence should have been raised on appeal rather than through this PCR action. See Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“[A]n application for post-conviction relief is not a substitute for an appeal.”); Drayton v. Eyatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993) (“[E]rrors which can be reviewed on direct appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings.”). Further, PCR is not a proper avenue to challenge the sufficiency of the evidence. See S.C. Code Ann. § 17-27-20(6) (providing the PCR Act “shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction”). Thus, allegations 18, 20, 21, 22, and 23, as set forth above, are denied and dismissed with prejudice.⁹

Trial court error

In his initial application, Applicant alleged “Judicial misconduct: trial court exceeded its jurisdiction to impose sentence, trial court committed ‘fraud on the court.’” In his brief attached to the initial application, he posed the following questions related to the trial judge, which this Court construes as allegations of trial court error:

1. Whether Petitioner’s right to due process of law and equal protection under the law [was] violated when trial court convicted

⁹ As to allegation seven, this Court finds credible Underwood’s testimony that he did not fraudulently convey any information to the courts about Applicant and the Grand Jury. (PCR 128). Applicant did not present any credible evidence that the solicitor knowingly elicited perjured testimony and thus did not prove a due process violation in this regard.

As to allegation 19, this Court finds credible Underwood’s testimony that he was not part of a conspiracy against Roberts. (PCR 128). Applicant did not present any credible evidence of conspiracy between the trial judge, trial counsel, the Assistant Attorney Generals, and the State Grand Jury Clerk, and this claim is denied.

defendant on unindicted offenses?

2. Whether Petitioner's right to due process of law and equal protection under the law [was] violated when trial judge denied Petitioner "impanelment documents," thereby denying Brady material to Petitioner? (And does this denial to prepare a defense constitute prejudice?)

3. Whether Petitioner's due process of law and equal protections under the law [was] violated when trial judge "inserted" herself into plea negotiations, in violation of Rule 11?

4. Whether Petitioner's right to due process of law and equal protections under the law [was] violated when trial judge infringed on defendant's right to obtain a copy of the transcript from State Grand Jury proceedings?

5. Whether Petitioner's due process of law and equal protections under the law [was] violated when Judge Jefferson "relieved prosecutor's burden of proof" pursuant to Rule 5(d), SCCrimP?

6. Whether trial judge failed to exercise her discretion, or abused her discretion, when Petitioner, in a criminal case, showed a 'particularized need' for access to Grand Jury transcript?

7. Whether trial judge committed "fraud on the court" and "fraud upon petitioner's legal rights? [conspired with prosecution to convict Applicant on unindicted offenses]

8. Whether trial judge conspired with prosecution to infringe on Petitioner's legal rights and liberty interest? [urged counsel to stipulate to COC, pg. 74-75]

9. Whether trial judge violated defendant's due process of law when the judge refused to allow Petitioner to present exculpatory evidence? (17, ln. 20-23; 19, ln. 8-18)

10. Whether trial judge infringed upon Petitioner's right to due process of law to have an "impartial" arbiter consider his case?

11. Whether trial judge infringed on defendant's right to present an alibi? [620]

12. Whether trial judge "initiated criminal charges" against Petitioner?

Applicant repeats many of these arguments in his Amended Application and nine “briefs” attached to this application. He raises the following additional arguments related to the trial judge:

13. Whether trial judge’s erroneous ruling defying defendant the State Grand Jury impanelment documents before a jury being sworn an abuse of discretion or a failure to exercise discretion? And whether defendant suffers prejudice?

14. Whether trial judge committed the act of actual or constructive fraud upon the court? And whether defendant suffers prejudice?

15. Whether trial judge infringed defendant’s due process of law and defendant’s 6th Amendment right to confrontation when as the gatekeeper she urged a stipulation of defendant’s chain of custody without colloquy?

In its amended return, Respondent moved to dismiss Applicant’s claims against the trial court, asserting PCR was not the proper forum to raise claims against the trial court.

This Court agrees with Respondent and grants Respondent’s motion to dismiss the claims against the trial court. See Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“[A]n application for post-conviction relief is not a substitute for an appeal.”); Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 519 (1993) (“[E]rrors which can be reviewed on direct appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings.”).

To the extent any of these allegations raise due process claims that could not have been asserted on appeal, this Court reiterates its foregoing findings that Applicant was properly indicted, and Applicant failed to establish any due process violation. This Court further finds Applicant did not present any credible evidence that the trial court judge committed fraud; conspired with the prosecutors; tried Applicant on unindicted offenses; inserted herself into plea negotiations; infringed upon Applicant’s right to obtain the Grand Jury transcript; relieved the State of its burden of proof; refused to allow Applicant to present exculpatory evidence; was not impartial; initiated

criminal charges against Applicant; or urged trial counsel to stipulate to the chain of custody. Finally, this Court reiterates its finding that the trial court had subject matter jurisdiction. See Gentry, 363 S.C. at 101, 610 S.E.2d at 499 (“Circuit courts obviously have subject matter jurisdiction to try criminal matters.”). Thus, these claims are denied and dismissed with prejudice.

Ineffective Assistance of Counsel

Applicant contends counsel was ineffective for “conspiring with prosecution on unfounded offenses.” In his “brief,” Applicant alleged counsel was ineffective based on the following:

1. Counsel stipulated to the chain of custody for the evidence; (Tr. 74)
2. Counsel failed to object to and cite controlling precedent regarding impanelment documents (15, 9);
3. Counsel failed to object to codefendant’s out-of-court statements and confessions (Tr. 721-22);
4. Counsel refused to present alibi on defendant’s behalf;
5. Counsel refused to present exculpatory evidence to trial court; (Tr. 17)
6. Counsel acted as a second prosecutor at trial trying to convince defendant to take a plea (Tr. 235, 237).

In a PCR action, an applicant bears the burden of proving the allegations. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating claims of ineffective assistance of counsel, courts apply the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, an applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625. “Counsel is strongly presumed to have rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment,” and an applicant must overcome this presumption to receive relief. *Id.*; *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove the deficiency prejudiced him such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

Conspiring with prosecution

Applicant first contends counsel was ineffective for “conspiring with prosecution on unfounded offenses.” This contention lacks merit. As noted, this Court finds credible Underwood’s testimony that the State Grand Jury did in fact meet to indict Applicant. This Court further finds credible trial counsel’s testimony that he was not a part of a conspiracy against Applicant. Applicant has not set forth any credible evidence that counsel conspired with the prosecution; thus, this claim is denied.

Stipulation to Chain of Custody

Applicant contends counsel was ineffective for stipulating to the chain of custody for the drug evidence. This Court finds Applicant did not prove counsel was ineffective in this regard.

At trial, counsel stipulated to the chain of custody for the drug evidence. (Tr. 74-75). Likewise, counsel for co-defendant stipulated to the chain of custody for the drug evidence, stating, “It looks to me like the chain of custody has been met.” (Tr. 74). At the PCR hearing, counsel credibly testified the State showed him the chain of custody, he did not have any concerns with the chain, and he did not see any grounds for suppressing the evidence due to a defect in the chain. Thus, this Court finds counsel’s decision to stipulate to the chain of custody was reasonable under prevailing professional norms and not deficient. This Court further finds Applicant did not set forth any deficiency in the chain of custody that would have led to the suppression of the drug evidence.

Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

Failed to object to not having impanelment documents

Applicant next contends counsel was ineffective for not objecting to and citing controlling precedent regarding the impanelment documents. This Court finds Applicant did not prove counsel was ineffective in this regard. Pertinently, at the PCR hearing, trial counsel credibly testified he had the indictment and the discovery, and he did not see the need to request the impanelment documents. This Court finds counsel's failure to request the impanelment documents was reasonable within prevailing professional norms and not deficient. Further, Applicant has not shown a reasonable probability the outcome would be different had counsel requested the impanelment documents. Specifically, this Court finds credible Underwood's testimony that the State Grand Jury did in fact meet and indict Applicant. Thus, it is not reasonably probable the charges would have been dismissed had counsel requested the impanelment documents. Applicant thus did not prove deficiency or prejudice, and this claim is denied.

Co-defendant's statement

Applicant contends counsel was ineffective for not objecting when Agent Wingo testified to statements made by co-defendant Justin Hunter, which violated the Confrontation Clause. This Court finds Applicant did not prove this ground. At the PCR hearing, trial counsel testified he did not believe the testimony was prejudicial to Applicant's case. He further testified he would have objected if he believed the testimony harmed or prejudiced Applicant's defense. This Court finds counsel's foregoing testimony credible. This Court further finds counsel articulated a valid reason for not objecting in that the testimony was not harmful to Applicant's case and Applicant thus did not prove deficiency. Further, this Court finds the testimony itself was not prejudicial to Applicant's defense. Specifically, Agent Wingo provided the following testimony about Hunter's

statement:

Mr. Hunter confessed that he was involved in trafficking heroin. He had been involved in trafficking heroin since winter of 2015. He said that he began trafficking heroin when he met a female down here named Sonia. He was introduced to another male through Sonya named R. I believe—he briefly bought heroin from R. He then began purchasing heroin from an individual known as B.K. And that went on for about six months. Then Mr. Hunter told me that he would go to New York. He would fly to New York with the money for the heroin in his pocket, and he would stay at the specific hotel. And if I'm correct, the hotel is the Gateway Inn. And he told me address is 1780 Sunrise Highway. He would meet an individual at the Holte known as Fresh. And then he would have a female transport it back down.

He would go there and I think he bought—I would have to refer to my notes here. He bought 40 grams of heroin from Fresh for right around \$1,600. After that, Mr. Hunter gave me a list of customers that he would sell to. There was three specifically he told me about. One was a male named Parker. He would sell him around an eight-ball.

Another was a man named Chuck. Chuck was a white male, he had a girlfriend. He drove a work truck. Mr. Hunter told me he sold at least a gram.

And the third was an individual named Tom who he sold heroin through throughout Dorchester and Berkeley Counties.

(Tr. 721-22). Critically, although Hunter implicated several individuals in his statement, Agent Wingo did not testify that Hunter implicated Applicant. Applicant thus cannot show prejudice from counsel's failure to object to this testimony, and this claim is denied.

Alibi

At the PCR hearing, Applicant averred counsel was ineffective for not presenting evidence that he was detained in New York during the time the confidential informant purchased drugs from Applicant. Applicant did not prove this ground. Initially, this Court finds credible trial counsel's testimony that Applicant refused to speak to him prior to trial and did not raise this issue prior to trial. This Court likewise finds credible counsel's testimony that the dates Applicant claimed to be

incarcerated were different than the dates law enforcement relied on. Thus, counsel articulated a valid reason for not presenting an alibi and was not deficient. This Court further finds Applicant did not prove prejudice. Specifically, Applicant did not present credible evidence that he was actually detained in New York on the dates the confidential informant testified he purchased drugs from Applicant. Applicant thus did not prove prejudice, and this claim is denied.

Exculpatory evidence

Applicant contends counsel was ineffective for not presenting exculpatory evidence at trial. Applicant did not prove this grounds. At the PCR hearing, trial counsel testified credibly that he reviewed the State's evidence with Applicant. As set forth above, this Court finds the letter from Court Administration did not prove the State Grand Jury did not meet; thus, this letter does not constitute exculpatory evidence. Applicant did not clearly set forth any other evidence he believed was exculpatory or introduce such evidence at the PCR hearing. Applicant thus did not meet his burden of proving deficiency or prejudice, and this claim is denied.

Plea negotiations

Applicant contends counsel was ineffective in "acting as a prosecutor" and attempting to coerce him to plead guilty. This claim lacks merit. At the PCR hearing, counsel credibly testified he spoke with Applicant during trial about whether he wanted to plead guilty, but Applicant did not wish to do so. This Court finds counsel's performance in this regard reasonable under prevailing professional norms and not deficient. Further, Applicant cannot demonstrate prejudice because he, in fact, did not enter into a plea. This claim is thus denied.

Prosecutorial Misconduct

Applicant contends the prosecutor impaired the Grand Jury's independent role. In his brief, Applicant raised the following questions related to his prosecutorial misconduct claim:

1. Whether prosecutor's misconduct was a significant infringement on grand jury's ability to exercise independent judgment, as would support dismissal of indictment?
2. Whether defendant suffered prejudice from prosecutorial misconduct?
3. Whether prosecutor's misconduct constitutes a violation of defendant's due process of law?
4. Whether defendant suffered deprivation of the right to indictment by Grand Jury pursuant to § 17-19-10, and whether this constitutes structural error?
5. Whether the accumulation of misconduct by prosecutors infringed on defendant's 'substantive' due process rights where defendant has a 'liberty' interest, when in violation of Art. V § 22?
6. Whether this defect affects substantial rights secured by the 14th Amend. Due process and equal protections under the law?
7. Whether prosecutor violated Petitioner's procedural and substantive due process of law when prosecutor had not disclosed favorable evidence (impanelment documents), governed by materiality standard? And whether this denial constitutes "prejudice" as well as a Brady violation?
8. Whether prosecutor committed "fraud on the court" and fraud against Petitioner's legal rights?
9. Whether prosecutor "conspired" to infringe upon Petitioner's liberty interest?
10. Whether prosecutor infringed Petitioner's right pursuant to section 14-7-1720(A) and (D) and Rule 5, SCRCrimP?
11. Whether Petitioner's right to due process of law and equal protections under the law [was] violated when Petitioner was denied the equal protections of the laws in constitutional and statutory provisions relating to Grand Jury? When "no court reporter had been assigned to record State Grand Jury proceedings?"

This Court finds Applicant did not prove prosecutorial misconduct. Applicant's allegations in this regard center on his belief that the State Grand Jury did not meet to indict him. This Court finds

credible Underwood's testimony that the State Grand Jury did, in fact, meet to indict Applicant. This Court further finds credible Underwood's testimony that he would have provided impanelment documents had they been requested. This Court finds Applicant has not set forth a Brady violation, a due process violation, or evidence that the prosecutor committed fraud on the court, conspired against Applicant, or infringed upon the Grand Jury's ability to exercise independent judgement. This claim is thus denied.

Ineffective Assistance of Appellate Counsel

Applicant contends appellate counsel was ineffective for not raising on appeal the issues regarding the Grand Jury impanelment documents, the letter from Court Administration (which he contends constitutes exculpatory evidence), the circuit court's alleged lack of subject matter jurisdiction, or a conflict of interest with trial counsel. These allegations lack merit.

Initially, this Court finds credible appellate counsel's testimony that she briefed what she believed to be the best issue on appeal—the denial of Applicant's right to represent himself. This Court further finds credible appellate counsel's testimony that she did not raise the issue regarding impanelment documents because it was raised by Applicant while he was represented by counsel, which constituted hybrid representation and thus would not have been ripe for appeal. She further credibly testified she did not believe the letter from Court Administration constituted evidence that the State Grand Jury did not meet; she did not believe the issue regarding the court's lack of subject matter jurisdiction had merit; she did not see any evidence that trial counsel labored under a conflict of interest; she did not raise an issue related to counsel's failure to present an alibi because that was a PCR matter rather than a direct appeal matter; she believed the State presented sufficient evidence of the amounts of heroin; and she didn't see any preserved issue related to the conspiracy charge. This Court thus finds counsel articulated valid reasons for not raising these issues and

Applicant thus did not prove deficiency. Applicant likewise did not prove prejudice, as he did not set forth any issue that would have likely caused the appellate courts to reverse his conviction on appeal. Thus, this claim is denied.

Remaining allegations

This Court finds Applicant did not present credible evidence of conspiracy against public justice; corruption; fraud upon the Court; judicial misconduct; or perjury; these claims are thus denied.

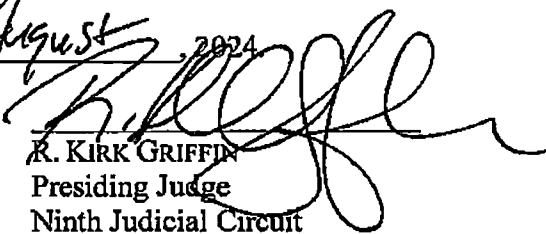
CONCLUSION

Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice. Should Applicant wish to appeal, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appellate procedures.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 26 day of August, 2024.


R. KIRK GRIFFIN
Presiding Judge
Ninth Judicial Circuit

, South Carolina

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JUL 02 2026

S.C. SUPREME COURT

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

VS.

JUSTIN GORDON HUNTER,

(A.K.A. "MO"),

EMORY WARREN ROBERTS,

(A.K.A. "Q"),

FNU LNU (A.K.A. "KEITH"),

ROSEMARY QUEZADA,

(A.K.A. "CI CI"),

(A.K.A. "CHICKA"),

LASSIAN DIXON JOHNSON,

(A.K.A. "G")(A.K.A. "BG"),

WILLIAM ORLAND BROWN, IV,

(A.K.A. "WILL"),

DEFENDANTS.

CASE NO. **2016-GS-47-02**

**INDICTMENT FOR
UNLAWFUL DRUGS**

**TRAFFICKING IN ILLEGAL
DRUGS**

(HEROIN, 28 GRAMS OR MORE)

(CONSPIRACY)

S.C. Code Ann. § 44-53-370 (e)(3)(c)

(1 Count)

**TRAFFICKING IN ILLEGAL
DRUGS (HEROIN, 4-14 GRAMS)**

S.C. Code Ann. § 44-53-370(e)(3)(a)

(3 Counts)

**TRAFFICKING IN ILLEGAL
DRUGS (HEROIN, 14-28 GRAMS)**

S.C. Code Ann. § 44-53-370(e)(3)(a)

(2 Counts)

DISTRIBUTION OF HEROIN

S.C. Code Ann. § 44-53-370 (b)(1)

(5 Counts)

**DISTRIBUTION OF
METHAMPHETAMINE**

S.C. Code Ann. § 44-53-375(B)

(1 Count)

**POSSESSION OF A FIREARM
DURING COMMISSION OF OR**

ATTEMPT TO COMMIT A

VIOLENT CRIME

S.C. Code Ann. § 16-23-490

(1 Count)

TRAFFICKING COCAINE,

100 - 200 GRAMS

S.C. Code Ann. § 44 53 370(e)(2)(c)

(1 Count)

FILED

APRIL 13 2016

James R. Parks

CLERK, STATE GRAND JURY

) POSSESSION WITH INTENT TO
) DISTRIBUTE HEROIN
) S.C. Code Ann. § 44-53-370 (b)(1)
) (1 Count)
)
) POSSESSION WITH INTENT TO
) DISTRIBUTE
) METHAMPHETAMINE
) S.C. Code Ann. § 44-53-375(B)
) (1 Count)

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on April 12, 2016, the State Grand Jurors present upon their oath:

COUNT ONE
TRAFFICKING IN ILLEGAL DRUGS (HEROIN, 28 GRAMS OR MORE)
(CONSPIRACY)
S.C. Code Ann. § 44-53-370 (e)(3)(c)

THM
4-12-16
 That JUSTIN GORDON HUNTER (A.K.A. "MO"), EMORY WARREN ROBERTS (A.K.A. "Q"), FNU LNU (A.K.A. "KEITH"), ROSEMARY QUEZADA (A.K.A. "CI CI") (A.K.A. "CHICKA"), LASSIAN DIXON JOHNSON (A.K.A. "G") (A.K.A. "BG"), WILLIAM ORLAND BROWN, IV (A.K.A. "WILL"), and other persons whose names are both known and unknown to the State Grand Jury, did in Berkeley County and Dorchester County, South Carolina, from January 1, 2015 to the present, knowingly and intentionally provide financial assistance or otherwise aid, abet, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State twenty eight (28) grams or more of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT TWO
TRAFFICKING IN ILLEGAL DRUGS (HEROIN, 4-14 GRAMS)
S.C. Code Ann. § 44-53-370(e)(3)(a)

That JUSTIN GORDON HUNTER (A.K.A. "MO") did in Berkeley County, on or about September 30, 2015, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State or knowingly become in actual or constructive possession or knowingly attempt to become in actual or constructive possession of four (4) grams or more but less than fourteen (14) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT THREE
TRAFFICKING IN ILLEGAL DRUGS (HEROIN, 14-28 GRAMS)
S.C. Code Ann. § 44-53-370(e)(3)(a)

That JUSTIN GORDON HUNTER (A.K.A. "MO") did in Berkeley County, on or about October 28, 2015, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State or knowingly become in actual or constructive possession or knowingly attempt to become in actual or constructive possession of fourteen (14) grams or more but less than twenty eight (28) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT FOUR
DISTRIBUTION OF HEROIN
S.C. Code Ann. § 44-53-370 (b)(1)

That JUSTIN GORDON HUNTER (A.K.A. "MO"), did in Berkeley County, on or about December 14, 2015, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT FIVE
DISTRIBUTION OF HEROIN
S.C. Code Ann. § 44-53-370 (b)(1)

That JUSTIN GORDON HUNTER (A.K.A. "MO"), did in ^{Berkeley 4/2/16 Tdn} ~~Dorchester~~ County, on or about January 14, 2016, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT SIX
DISTRIBUTION OF METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That JUSTIN GORDON HUNTER (A.K.A. "MO") and ROSEMARY QUEZADA (A.K.A. "CI CI") (A.K.A. "CHICKA") did in Berkeley County, on or about February 3, 2016, knowingly manufacture, distribute, dispense, deliver, purchase or aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT SEVEN
TRAFFICKING COCAINE, 100 - 200 GRAMS
S.C. Code Ann. § 44-53-370(e)(2)(c)

That ROSEMARY QUEZADA (A.K.A. "CI CI") (A.K.A. "CHICKA") and LASSIAN DIXON JOHNSON (A.K.A. "G") (A.K.A. "BG") did, in Berkeley County, on or about February 8, 2016, knowingly possess (actually or constructively), sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to possess (actually or constructively), sell, manufacture, deliver, purchase, or bring into this State, one hundred (100) grams or more but less than two hundred (200) grams of cocaine, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT EIGHT
POSSESSION WITH INTENT TO DISTRIBUTE HEROIN
S.C. Code Ann. § 44-53-370 (b)(1)

That ROSEMARY QUEZADA (A.K.A. "CI CI") (A.K.A. "CHICKA") and LASSIAN DIXON JOHNSON (A.K.A. "G") (A.K.A. "BG") did, in Berkeley County, on or about February 8, 2016, knowingly manufacture, distribute, dispense, deliver, purchase or aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense or deliver a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT NINE
TRAFFICKING IN ILLEGAL DRUGS (HEROIN, 4-14 GRAMS)
S.C. Code Ann. § 44-53-370(e)(3)(a)

That LASSIAN DIXON JOHNSON (A.K.A. "G") (A.K.A. "BG") did in Berkeley County, on or about September 25, 2015, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State or knowingly become in actual or constructive possession or knowingly attempt to become in actual or constructive possession of four (4) grams or more but less than fourteen (14) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT TEN
TRAFFICKING IN ILLEGAL DRUGS (HEROIN, 14-28 GRAMS)

S.C. Code Ann. § 44-53-370(e)(3)(a) ^b THM 4-12-16

That FNU LNU (A.K.A. "KEITH") did in Berkeley County, on or about October 19, 2015, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State or knowingly become in actual or constructive possession or knowingly attempt to become in actual or constructive possession of fourteen (14) grams or more but less than twenty eight (28) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT ELEVEN
DISTRIBUTION OF HEROIN
S.C. Code Ann. § 44-53-370 (b)(1)

That EMORY WARREN ROBERTS (A.K.A. "Q"), did in Berkeley County, on or about January 7, 2016, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT TWELVE
DISTRIBUTION OF HEROIN
S.C. Code Ann. § 44-53-370 (b)(1)

Amc
4-12-16

That EMORY WARREN ROBERTS (A.K.A. "Q") and WILLIAM ORLAND BROWN, IV (A.K.A. "WILL"), did in Berkeley County, on or about January 19, 2016, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT THIRTEEN
DISTRIBUTION OF HEROIN
S.C. Code Ann. § 44-53-370 (b)(1)

That EMORY WARREN ROBERTS (A.K.A. "Q"), did in Berkeley County, on or about February 2, 2016, knowingly and intentionally, distribute, dispense, and/or deliver; or did aid, abet, attempt, or conspire to distribute, dispense, and/or deliver, a quantity of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT FOURTEEN
TRAFFICKING IN ILLEGAL DRUGS (HEROIN, 4-14 GRAMS)
S.C. Code Ann. § 44-53-370(e)(3)(a)

That EMORY WARREN ROBERTS (A.K.A. "Q") did in Berkeley County, on or about February 8, 2016, knowingly sell, manufacture, cultivate, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State or knowingly become in actual or constructive possession or knowingly attempt to become in actual or constructive possession of four (4) grams or more but less than fourteen (14) grams of heroin, a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

COUNT FIFTEEN
POSSESSION OF A FIREARM DURING COMMISSION OF OR ATTEMPT TO
COMMIT A VIOLENT CRIME
S.C. Code Ann. § 16-23-490

That EMORY WARREN ROBERTS (A.K.A. "Q") did in Berkeley County, on or about February 8, 2016, possess or visibly display a firearm during the commission of or attempt to commit a violent crime to wit: TRAFFICKING IN ILLEGAL DRUGS (HEROIN), in violation of § 16-23-490, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

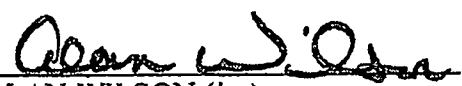
COUNT SIXTEEN
POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That EMORY WARREN ROBERTS (A.K.A. "Q") did in Berkeley County, on or about February 8, 2016, knowingly manufacture, distribute, dispense, deliver, purchase or aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

Against the peace and dignity of the State and contrary to the statute in such case made and provided.

A True Bill


FOREMAN


ALAN WILSON (jru)
ATTORNEY GENERAL

RECEIVED

JUL 02 2026

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF GENERAL SESSIONS
S.C. SUPREME COURT

COUNTY OF

Berkeley

STATE

JUL 28 2017

INDICTMENT/CASE#:

2016-GS-47-02 (Count 13)VS. Emory Warren Robert JAMES R. PARKSOffense: Direct PresentmentAKA: CLERK, STATE GRAND JURYRace: B Sex: M Age: S.C. Code §: 44-53-370(b)(1)DOB: SS#: CDR Code #: 0183Address: City, State, Zip: DL# SID# *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Distribution of HeroinIn violation of § 44-53-370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: J. R. Parks 76207

Assistant Attorney General

SC Bar # 60

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 15 years and/or to pay a fine of \$25,000; provided that upon the service of 15 days/months/years and or payment of \$, plus costs and assessments as applicable*; the balance is suspended with probation for 15 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all at 7/28/17☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedPTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPSAttend Voc. Rehab. Or Job Corp. Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	<u></u>
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ <u></u>
\$56-5-2995 (DUI Assessment)	\$12	\$ <u></u>
\$56-1-286 (DUI Breath Test)	\$25	\$ <u>25.00</u>
Proviso 61.6 (Public Def/Probation)	\$500	\$ <u>500.00</u>
\$14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
\$14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
\$50-21-114 (BUI Breath Test Fee)	\$50	\$ <u></u>
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u></u>
3% to County (if paid in installments)	\$	\$ <u>23.25</u>

TOTAL

\$ 798.25Clerk of Court/Deputy Clerk Margaret J. SelfCourt Reporter: Karen AndersonRandom Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge W. J. SelfJudge Code: 2128Sentence Date 7/28/17Plea Accepted Date(if different):

FILED

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF

Berkeley

JUL 28 2017

STATE

JAMES R. PARKS

INDICTMENT/CASE#:

2016GS-47-02 (convict 14)

VS. Emory Warren Roberts

CLERK STATE GRAND JURY

Direct Presentment

AKA:

Date of Offense:

5/8/2016

Race:

Sex:

Age:

S.C. Code §:

44-53-370(e)(3)

DOB:

SS#:

CDR Code #:

2361

Address:

City, State, Zip:

DL#

* SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: TRAFFICKING HEROIN (4-14 GRAMS)

In violation of § 44-53-370(e)(3) of the S.C. Code of Laws, bearing CDR Code # 2361

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense,

☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,

☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

J. R. F. 76207

Assistant Attorney General

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 15 years and/or to pay a fine of \$50,000; provided that upon the service of 15 days/months/years and or payment of \$, plus costs and assessments as applicable*; the balance is suspended with probation for 15 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 7/28/17

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$14-1-211 (A)(2)(DUI Surcharge)

\$100

\$56-5-2995 (DUI Assessment)

\$12

\$56-1-286 (DUI Breath Test)

\$25

Proviso 61.6 (Public Def/Probation)

\$500

\$14-1-212 (Law Enforce. Funding)

\$25

\$14-1-213 (Drug Court Surcharge)

\$150

\$50-21-114 (BUI Breath Test Fee)

\$50

\$56-5-2942(J) (Vehicle Assessment)

\$40/ea

3% to County (if paid in installments)

\$ 23.25

TOTAL

\$ 798.25

Clerk of Court/Deputy Clerk

Court Reporter:

Maryann D. Sear
Laven Anderson

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2128

Sentence Date 7/28/17

Plea Accepted Date(if different): _____

FILED

STATE OF SOUTH CAROLINA

JUL 28 2017

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Berkeley

JAMES R. PARKS

STATE

CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2016-GS-47-02 (Count 15)

VS. Emory Warner Roberts

AW#: Direct Recantment

ARA: 002
Race: B Sex: M Age:
DOB: SS#:
Address:
City, State, Zip:
DL# * SID#

Date of Offense: 2/8/2016
S.C. Code §: 16-23-490
CDR Code #: 0549

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Possession of a Firearm during Commission of or Attempt to Commit a violent crime
In violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: James R. Parks 76207

Assistant Attorney General SE Bar # Defendant Attorney for Defendant SC Bar #
WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 9 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ provided that upon the service of days/months/years and or payment of \$ plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 7/28/17
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C. Section 922, It is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$ 500.00
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 23.35

TOTAL \$ 798.25

Clerk of Court/Deputy Clerk Margaret J. Seo
Court Reporter: Karen Anderson

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. ☐

May serve W/E beginning Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ Beginning \$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge OK Jess
Judge Code: 2128
Sentence Date 7/28/17

Plea Accepted Date(if different):

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

JUL 28 2017

STATE

Berkeley

JAMES R. PARKS

INDICTMENT/CASE#: 2016-GS-47-02(count 16)

VS.

CLERK, STATE GRAND JURY

AW#: Direct PresentmentAKA: Emory Warren RobertsRace: BSex: M

Age: _____

DOB: _____

SS#: _____

Address: _____

City, State, Zip: _____

DL# _____

* SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Possession with Intent to Distribute MethamphetamineIn violation of § 44-53-375(B)of the S.C. Code of Laws, bearing CDR Code # 3198☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s Initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Robert R. Thompson 76207

Assistant Attorney General

SC Bar # _____

Defendant

Attorney for Defendant

SC Bar # _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$25,000 provided that upon the service of 15 days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Probation) \$500 \$ 500.00\$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00\$14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

\$50-21-114 (BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 23.25TOTAL \$ 798.25Clerk of Court/Deputy Clerk Therese J. ScottCourt Reporter: Loren AndersonRandom Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge Alfred J. JonesJudge Code: 2128Sentence Date 7/28/17

Plea Accepted Date(if different): _____

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Berkeley**FILED**

STATE

JUL 28 2017

INDICTMENT/CASE#: 2016GS-47-02 (count II)VS. Emory Warren RobertsAW#: Direct PresentmentAKA: "O" JAMES R. PARKSDate of Offense: 1/7/2016Race: B Sex: M CLERK, STATE GRAND JURYS.C. Code §: 44-53-370(b)(1)

DOB: _____ SS#: _____

CDR Code #: 0183

Address: _____

City, State, Zip: _____

DL# _____ * SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐**SENTENCE SHEET**

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Distribution of HeroinIn violation of § 44-53-370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s Initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: John R. Z... 76207

Assistant Attorney General

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years on ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and or payment of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all at 7/28/17☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
\$56-5-2995 (DUI Assessment)	\$12	\$ _____
\$56-1-286 (DUI Breath Test)	\$25	\$ _____
Proviso 61.6 (Public Def/Probation)	\$500	\$ <u>500.00</u>
\$14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
\$14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
\$50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% to County (if paid in installments)		\$ <u>23.25</u>

TOTAL

\$ 798.25Clerk of Court/Deputy Clerk Margaret J. SellsCourt Reporter: Karen Anderson

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge DR J...Judge Code: 2178Sentence Date 7/28/17

Plea Accepted Date(if different): _____

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Berkeley

STATE

JUL 28 2017

INDICTMENT/CASE#:

2016GS-47-02 (count 1)VS. Emory Warren Roberts JAMES R. PARKS
CLERK, STATE GRAND JURY

AW#:

Direct PresentmentAKA: W + Q

Date of Offense:

1/19/2016Race: B Sex: M Age: _____

S.C. Code §:

44-53-370(b)(1)

DOB: _____ SS#: _____

CDR Code #:

0183

Address: _____

City, State, Zip: _____

DL# _____ * SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Distribution of HeroinIn violation of § 44-53-370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST-SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

76207

Assistant Attorney General

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$25,000; provided that upon the service of 15 days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of 7/28/17☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2128Sentence Date: 7/28/17

Plea Accepted Date(if different): _____

*Fine:

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Probation) \$500 \$ 500.00\$14-1-212 (Law Enforce. Funding) \$25 \$ 25.00\$14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

\$50-21-114 (BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 23.25

TOTAL

\$ 798.25

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

STATE

Berkeley

JUL 28 2017

INDICTMENT/CASE#: 2016GS-47-02 (Count 1)VS. Emory Warren Roberts JAMES R. PARKSAW#: Direct PresentmentAKA: "Q" CLERK, STATE GRAND JURYRace: 13 Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐Date of Offense: 1/1/2015 - 4/12/2016S.C. Code §: 44-53-370(e)(3)(c)CDR Code #: 0149

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Trafficking Illegal Drugs (Heroin) 28 grams or more (Conspiracy)In violation of § 44-53-370(e)(3)(c) of the S.C. Code of Laws, bearing CDR Code # 0149☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

76207

Assistant Attorney General SC Bar # _____

Defendant

Attorney for Defendant

SC Bar # _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all of the above 7/28/17☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning
Substance Abuse Counseling ☐

*Fine:

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge AK JJudge Code: 2128Sentence Date 7/28/17

Plea Accepted Date(if different): _____

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$ <u>500.00</u>
\$14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
\$14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ <u>23.25</u>

TOTAL

\$ 798.25

Clerk of Court/Deputy Clerk

Court Reporter:

Maryann J. Self
Karen Anderson

COUNT SIXTEEN
POSSESSION WITH INTENT TO DISTRIBUTE METHAMPHETAMINE
S.C. Code Ann. § 44-53-375(B)

That EMORY WARREN ROBERTS (A.K.A. "Q") did in Berkeley County, on or about February 8, 2016, knowingly manufacture, distribute, dispense, deliver, purchase or aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to distribute, dispense, or deliver methamphetamine ("ice" or "crank"), a controlled substance under provisions of § 44-53-110, *et. seq.*, Code of Laws of South Carolina (1976), as amended, such conduct not having been authorized by law and such activity occurring and/or having significance in more than one county of this State or arising out of or in connection with a crime having significance in more than one county of this State.

Against the peace and dignity of the State and contrary to the statute in such case made and provided.

A True Bill


FOREMAN


ALAN WILSON (jru)
ATTORNEY GENERAL

RECEIVED

MAR 01 2024

RECEIVED

JUL 02 2026

S.C. SUPREME COURT

S.C. SUPREME COURT

1.)

Petition For Writ OF Certiorari

Feb. 27, 2024

§46:4. Petition for writ of certiorari (From Court Form 17, SCACR)

The State of South Carolina

In the Supreme Court

Appeal From Berkeley County
Court of Common Pleas

Judge R. Kirk Griffin, Circuit Court Judge

Case Number : 2020-CP-08-01349

Appellate Case No. 2024-001521

Name of Respondent

Taylor Smith, Assistant Deputy Attorney General;

Daniell Dixon, Esquire

V.

Mr. Emory W. Roberts Jr.

Petition For WRIT of Certiorari

Mr. Emory W. Roberts Jr.

Attorney for Petitioner, Pro se

Perry Correctional Institution

430 Oaklawn Rd.

Pelzer S.C. 29669

2.)

Attorney For Respondent
Taylor Smith, A.D.A.G.;
Danielle Dixon, Esquire
South Carolina Attorney General's Office
Criminal Division / Office 803-734-0904
P.O. Box 11549 / Columbia, SC 29211

• Index •

Questions Presented . . . Pages 8-14

Statement of the Case / Relevant Facts . . . Pages 4-7

- The Court of Common Pleas should have held that . . .
- 1.) Trial Court lacked subject matter jurisdiction to convict as there exist "a want of jurisdiction in the trial court."
 - 2.) Trial Counsel was constitutionally ineffective and prejudiced Mr. Roberts his Sixth Amendment right to "effective counsel."
 - 3.) Mr. Roberts was prejudiced his due process right to an impartial judge.
 - 4.) The judgment is "void" because of the violation of substantive constitutional rule of law regarding the repeated Brady violations.
 - 5.) Fraud upon the court is evident from the concealing of exculpatory evidence.
 - 6.) Prosecutors committed misconduct when State suppressed favorable evidence and violated Mr. Roberts due process.
 - 7.) Mr. Roberts due process right to "mount or prepare a defense was infringed."

3.)

8.) Trial judge committed "extrinsic fraud" when she concealed exculpatory evidence (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7), therefore, infringing Mr. Roberts due process of law to his right to "obtain" impeachment documents" pursuant to § 14-7-1720(A) and (D) and Rule 5, SCRCP and Brady.

9.) Court should of held that prejudice be presumed under the standard of Hunt v. Mitchell, 261 F.3d 575, 583 (6th Cir 2001) when counsel [was not] afforded discovery in the form of the "state grand jury impeachment documents".

10.) PCR court should have held Mr. Roberts Sixth Amendment right to confrontation was violated when Agent Wings read into the record "testimony hearsay" in the form of lab reports establishing the elements of crime.

11.) Court should of held that Mr. Roberts Sixth Amendment right to "effective assistance of counsel" was infringed under the standard of U.S. v. Williamson, 183 F.3d 458, 463-64 (6th Cir. 1999), when counsel failed to object and cite directly controlling precedent regarding: 1.) his right to mount or prepare a defense in [obtaining] impeachment documents as a substantive right; 2.) his procedural due process right to obtain documents pursuant to § 14-7-1720(A) and (D) and, Rule 5, SCRCP; 3.) his right to present a complete defense to the jury; 4.) and his failure to object to prosecutions failed obligations under Brady. (Tr. July 24-28, 2017, Page 15, lines 5-9).

4.)

Relevant Facts

On February 8, 2016 Mr. Roberts was "seized" by S.L.E.D. Agents in Summerville, South Carolina (9th Circuit) and taken [directly] to Alvin S. Glenn Detention Center in Richland County (5th Circuit); and subsequently brought before a Court of incompetent jurisdiction on Feb. 9, 2016 in Richland County, which is [contrary] to § 14-7-1730 "Jurisdiction of Presiding Judge." Mr. Roberts and "alleged" codefendants were "illegally detained and unlawfully imprisoned" in the (5th Circuit) for crimes "alleged" in the (9th Circuit) from Feb. 8, 2016 to June 9, 2016 (Emphasis).

Mr. Roberts was not "arrested" pursuant to a "direct indictment" on Feb. 8, 2016 - Mr. Roberts' indictments are dated April 12, 2016 (Emphasis).

Mr. Roberts contends that he was unlawfully imprisoned in the 5th Circuit from Feb. 8, 2016 to June 9, 2016 "without an arrest warrant."

On June 9, 2016, Mr. Roberts was "taken" out of Alvin S. Glenn Detention Center located in Richland County, by SLED Agent Justin Wingo and subsequently "taken" to Hill Finkler Detention Center in Berkeley County, where Mr. Roberts and codefendants' liberty was restrained unlawfully by way of "A letter" typed by a Christina Bass dated June 9, 2016 at the direction of Agent Justin Wingo - in violation of the Fourth Amendment right of Mr. Roberts secured to him by the United States Constitution.

Mr. Roberts contends that the unlawful actions of Christina Bass and Agent Justin Wingo constitute the crime of Kidnapping.

Corporal Frederick Samuel, Agent Justin Wingo, and Christina Bass "intended to act together for their shared mutual benefit within the scope of the conspiracy" to deprive Mr. Roberts of his secured Fourth Amendment right from unreasonable seizure.

These aforementioned "conspirators" did on June 9, 2016, intrude on Mr. Roberts' "reasonable expectation of privacy" by means of trespassing upon his person, state had not met its "burden of proof" on elements (Purchase or brought into this state); and (Actual amounts of heroin) therefore evidence was insufficient to constitute charge.

5.)

On April 12-13, 2016 State Agents/Actors including but not limited to former State Grand Jury Clerk, James R. Parks did usurp the state grand jury's independent role "committing fraud upon the court", and violating the doctrine of the separation of powers. The direct evidence of the usurpation of the grand jury's independent role is in the form of a correspondence from Court Reporter (Former) Manager, Ms. Desiree Allen dated 11-6-2017, stating "You are requesting a transcript from State Grand Jury proceedings. This is to inform you that no court reporter was assigned to record state grand jury proceedings, therefore there is no transcript available" (Emphasis). Further evidence of the usurpation of the state grand jury's independent role can be demonstrated by the State's suppression of the "state grand jury impanelment documents" at trial when requested repeatedly by Mr. Roberts (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7) (Emphasis). Prosecutor's failed at their obligations under Brady and suppressed exculpatory evidence. Trial judge's erroneous rulings denying "impanelment documents" or "concealing the non-existence" of these documents constituted "extrinsic fraud"; for her conduct was misleading and arbitrary, collusive and deliberate and dishonest. While at the same time the trial judge is infringing Mr. Roberts' substantive right to mount or prepare a defense and denying him his procedural due process right pursuant to § 14-7-1720(A) and (D) and Rule 5, SCRPC; and prosecutor's are violating the substantive rule of law regarding Brady; defense counsel repeatedly refuses to object to these violations of constitutional law regarding prosecutor's failed obligations under Brady and Mr. Roberts' due process right to "prepare a defense" and to "present a complete defense" to the jury - demonstrating collusive behavior or conduct aimed at repression of Mr. Roberts' constitutional rights and infringing his Sixth Amendment right to a fair trial and Fourteenth Amendment right to the Due Process of law. In this, the conspiracy is clear and evident.

(6.)

Mr. Roberts suffered prejudice to his Sixth Amendment right to a fundamentally fair trial when prosecution violated his due process rights in failing to produce documents favorable to him (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7) (Emphasis). Mr. Roberts suffered prejudice to his Sixth Amend. right to "effective assistance of counsel" and his Sixth Amend. right to "Confrontation," under the standard of Crawford, when "law enforcement lab reports were read into record by Agent Justin Wingo," establishing illegal nature of substances defendant "allegedly" possessed, prepared pursuant to police investigation and admitted to establish element of "charged crimes," was "testimonial hearsay" subject to the Confrontation Clause. Mr. Roberts suffered prejudice to his Sixth Amendment right to "effective assistance of counsel," under the standard of Hart V. Gomez, 174 F.3d 1067, 1073 (9th Cir. 1999), when trial counsel "diligently failed" to introduce exculpatory records into evidence that demonstrated that the state grand jury had not convened as evidenced by Court Administrations correspondence to Mr. Roberts dated 11-6-2017 (Tr. July 24-28, 2017, page 17, lines 20-25). Assistant Attorney General, trial counsel and trial judge colluded together in a scheme to interfere with judicial machinery performing task of impartial adjudication. For example, trial judge "prevented Mr. Roberts from fairly presenting his case or defense," by her consistent erroneous rulings denying disclosure because she had direct knowledge that the State Grand Jury "impanelment documents" did not "legally exist" at the time during and before the defendants trial (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 85, lines 5-7) (Strong Emphasis). Extrinsic fraud, essentially entails preventing party from presenting all of case to court; trial judge concealed [exculpatory evidence] directly relevant and material to the defense. Her erroneous rulings constituted a false representation of a matter of fact, whether by words or by conduct, by concealment of that "which should have been disclosed," which deceived the court and the defense so that Mr. Roberts shall act upon it to his legal injury.

7.)

Mr. Roberts suffered prejudice to his Sixth Amend. right to the "effective assistance of counsel," under the standard of Williams, 529 U.S. at 393, when counsel failed to object to the infringement of Mr. Roberts right under the South Carolina State Constitution "to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him," pursuant to S.C. Const. Art. 1, § 11 and Art. V, § 22 (Tr. July 24-28, 2017, page 73, lines 3-6; Page 85, lines 5-7; Page 19, lines 8-16; Page 15, lines 5-9) (Emphasis). Fraud upon the court by trial judge's intentional concealment of documents (or lack of rather) effectively precluded the defendant from having his day in court. Mr. Roberts suffered prejudice to his Sixth Amendment right to "effective assistance of counsel" when under the standard of Hunt v. Mitchell, 261 F.3d 575, 583 (6th Cir. 2001), when counsel was not afforded discovery in the form of the State Grand Jury impanelment documents "before voir dire" (Emphasis). Trial counsel refused to be adequate assistance of counsel when he ... 1.) refused to object to being denied his substantive right to mount or prepare a defense (Tr. July 24-28, 2017, Page 15, lines 5-9); 2.) refused to object to Mr. Roberts being denied his procedural due process to obtain "impanelment documents" (Tr. July 24-28, 2017, Page 19, lines 8-16); 3.) refused to object to the infringement of his procedural right § 14-7-1720(A) and (D) and Rule 5, SCRPC; 4.) refused to object to his right under the State Constitution to demand that a legally constituted grand jury consider the criminal allegations against him pursuant to Art. 1, § 11 and Art. V, § 22 (Tr. July 24-28, 2017, Page 73, lines 3-6; Page 85, lines 5-7); 5.) refused to object to prosecution's failed obligation under Brady; 6.) refused to object to the infringement of Mr. Roberts due process right to have an "impartial judge" assigned to his case (Emphasis). Trial court lacked subject matter jurisdiction to convict Mr. Roberts for a want of jurisdiction. Mr. Roberts was infringed his Sixth Amendment right to a fundamentally fair trial.

8.)

Questions Presented

1.) Whether Mr. Roberts suffered prejudice to his Sixth Amendment right to "effective assistance of counsel" and his Fourteenth Amendment right to the due process of law to "mount or prepare a defense" and "present a complete defense to the jury", under the standard of Bagley, 473 U.S. at 683, when trial counsel [repeatedly] failed/refused to object to the "denial of the State Grand Jury impanelment documents"? (Tr. July 24-28, 2017, page 15, lines 5-9; page 19, lines 8-16; page 85, lines 5-7).

2.) Whether Mr. Roberts suffered prejudice to his Sixth Amendment right to "effective assistance of counsel", under the standard of Williams, 529 U.S. at 393, when trial counsel's "ineffectiveness did deprive the defendant of a substantive right (Preparation of a defense)" or "procedural right (§ 14-7-1720 (A) and (D), and Rule 5, SCRCP)", to which the law entitles him? (Tr. July 24-28, 2017, page 15, lines 5-9; page 19, lines 8-16; page 85, lines 5-7)

3.) Whether Mr. Roberts suffered prejudice to his Sixth Amendment right to "effective assistance of counsel", under the standard of Williams, 529 U.S. at 393, when counsel failed to object to the infringement of Mr. Roberts right under the South Carolina State Constitution "to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him," pursuant to S.C. Const. art. I, § 11 and art. V, § 22? (Tr. July 24-28, 2017, page 73, lines 3-6; page 85, lines 5-7).

4.) Whether, under the standard of Strickland, trial counsel "failed to advocate defendant's cause" regarding his attempts to "mount or prepare a defense" by obtaining/seeking to obtain the alleged "impanelment documents" from "alleged" state grand jury proceedings? (Tr. July 24-28, 2017, page 15, lines 5-9; page 19, lines 8-16; page 73, lines 3-6; page 85, lines 5-7).

9.)

5) Whether under the standard of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963); and Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed. 2d 104 (1972), had Mr. Roberts suffered prejudice to his "Sixth Amendment right to a fundamentally fair trial", when prosecution violated his due process rights in failing to produce documents favorable to him; and State failed to disclose impeaching/exculpatory evidence? (Tr. July 24-28, 2017, page 15, lines 5-9; page 19, lines 8-16; page 85, lines 5-7).

6) Whether Mr. Roberts suffered prejudice to his Sixth Amendment right to "effective assistance of counsel" and his "Sixth Amendment right to Confrontation", under the standard of Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed. 2d, when "law enforcement lab reports read into record by Agent Justin Wingo", establishing illegal nature of substances defendant "allegedly" possessed, prepared pursuant to police investigation and admitted to establish element of "charged crimes", was "testimonial hearsay" subject to the Confrontation Clause, even though reports was admitted at trial under the business record exception to the hearsay rule? (Tr. July 24-28, 2017, page 703, lines 6-12; page 710, lines 15-23; page 713, lines 4-12).

7) Whether the erroneous introduction of the lab reports, in violation of the Confrontation Clause, call into question the result of all Mr. Roberts drug convictions, under the standard of Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed. 2d?

8) Whether prejudice is presumed to Mr. Roberts Sixth Amendment right to "effective assistance of counsel", under the standard of Hunt v. Mitchell, 261 F.3d 575, 583 (6th Cir. 2001), when counsel [was not] afforded discovery in the form of the "state grand jury impanelment documents" before voir dire?

10.)

9.) Whether Mr. Roberts suffered prejudice to his Sixth Amendment right to "effective assistance of counsel", under the standard of U.S. v. Williamson, 183 F.3d 458, 463-64 (5th Cir. 1999), when counsel failed to object and cite directly controlling precedent regarding: 1.) his right to mount or prepare a defense regarding "impanelment documents" as a substantive right; 2.) his right to procedural due process to obtain "impanelment documents" pursuant to § 14-7-1720 (A) and (D) and Rule 5, SCRPC; 3.) his right to present a complete defense to the jury; 4.) and his failure to object and cite controlling precedent regarding the prosecutions failed obligations under Brady? (Tr. July 24-28, 2017, Page 15, lines 5-9; page 19, lines 8-16; page 85, lines 5-7).

10.) Whether Mr. Roberts suffered prejudice to his Sixth Amendment right to "effective assistance of counsel", under the standard of Strickland, 466 U.S. 668, when "counsel failed to advocate defendant's cause" regarding: Mr. Roberts substantive right to [obtain] "impanelment documents" that he may mount or prepare a defense; Mr. Roberts procedural right to [obtain] "impanelment documents" pursuant to § 14-7-1720 (A) and (D) and Rule 5, SCRPC, and due process of law; Mr. Roberts Sixth Amendment right and due process of law to "present a complete defense to the jury"; and counsel's failed objections to the failed constitutional duty of prosecutors regarding Brady? (Tr. July 24-28, 2017, page 15, lines 5-9; page 85, lines 5-7)

11.) Whether Mr. Roberts suffered prejudice to his due process of law under the standard of Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963), when prosecution failed to disclose exculpatory evidence? ... (Tr. July 24-28, 2017, page 15, lines 5-9; Page 19, lines 8-16; page 73, lines 3-6; page 85, lines 5-7) ... Relevant to guilt or punishment?

12.) Whether Mr. Roberts suffered prejudice to his Sixth Amendment right to "effective assistance of counsel", under the standard of Hart v. Gomez, 174 F.3d 1067, 1073 (9th Cir. 1999), when trial counsel "deliberately failed" to introduce exculpatory

11.)

records into evidence? (Tr. July 24-28, 2017, page 17, lines 20-25).

13.) Whether the PCR court has failed to analyze the prejudice that Mr. Roberts has suffered to his right to an impartial adjudicator when trial judge: 1.) infringed Mr. Roberts substantial right to mount or prepare a defense (Tr. July 24-28, 2017, page 15, lines 5-9); 2.) infringed his procedural right and the due process of law pursuant to § 14-7-1720 (A) and (D) and Rule 5, SCRCP (Tr. July 24-28, 2017, page 19, lines 8-16; page 85, lines 5-7); 3.) infringed his right under the South Carolina State Constitution pursuant to Art. I, § 11 and Art. V, § 22 (Tr. July 24-28, 2017, page 73, lines 3-6) (Emphasis).

14.) Whether Mr. Roberts suffered prejudice to his 14th Amend. right to Due Process of Law, when in light of "exculpatory evidence from Court Admin. dated 11-6-17" establishing that there was [no] convening of the State Grand Jury on dates of Mr. Roberts indictments, - his conviction was obtained through use of false evidence, known to be such by representatives of the State, and "fraud upon the court"?

15.) Whether under the standard of United States v. Wille, 234 F.3d 174, are Agent Justin Wingo, Christina Bass and Corporal Frederick Samuels of Hill Finkley Detention Center, guilty of Kidnapping pursuant to S.C. Code Ann. § 16-3-910, when Mr. Roberts was "unlawfully seized" and "imprisoned" by means of "A typed letter" dated June 9, 2016 as an "overt act" by Christina Bass, at the direction of co-conspirator Agent Justin Wingo and "accomplished" by Corporal Frederick Samuels? (See Christina Bass letter dated 6-9-16) (Enclosed).

16.) Whether Mr. Roberts is entitled to relief, in the interest of justice, based on the "evidence of material fact" (Christina Bass letter dated 6-9-16), pursuant to S.C. Code Ann. § 17-27-20 (A)(4)?

13.)

17.) Whether Mr. Roberts suffered prejudice to his Fourth Amendment right, which protects against unreasonable searches or [seizures], under the standard of United States V. Rabb, 141 F.2d 45 (3 Cir.); Wrightson V. United States, 227 F.2d 556 (D.C. Cir.) cf.; Carroll V. United States, 267 U.S. 132, when Mr. Roberts was "unlawfully seized" and "imprisoned unlawfully" without a warrant?

(See Letter from Christina Bress dated 6-9-16)

18.) Whether trial counsel's ineffectiveness "resulted in a breakdown of the adversarial process" that rendered the resulting verdict unreliable when counsel "labored under a conflict of interest" that affected his performance as evidenced by his collaboration with the State prosecutor's by intentionally refusing to: 1.) object to the trial judge's erroneous rulings denying Mr. Roberts substantive right to mount or prepare a defense" and his procedural due process right pursuant to § 14-7-1720(A) and (D) and Rule 5, SCRPC; 2.) object to prosecutions failed obligations under Brady (Tr. July 24-28, 2017, page 15, lines 5-9; page 19, lines 8-16; page 85, lines 5-7); 3.) trial counsel's failure to protect Mr. Roberts right under South Carolina State Constitution pursuant to Art. I, § 11 and Art. V, § 22 (Tr. July 24-28, 2017 page 73, lines 3-6).

19.) Whether counsel [entirely] failed to subject the prosecutions case to meaningful adversarial testing when: 1.) counsel "stipulated" to the "chain of custody", thereby infringing Mr. Roberts 6th Amend. right to confrontation as a result, which was tantamount to a guilty plea (Tr. July 24-28, 2017, page 74, lines 6-25; page 75, lines 1-5); 2.) counsel failed to object to Agent Wingo's "testimonial hearsay" regarding lab reports, thereby infringing Mr. Roberts right to "confrontation" under the Crawford standard; 3.) counsel failed to object to Mr. Roberts being denied his right to "mount or prepare a defense", and failed to object to the infringement of Mr. Roberts procedural due process right pursuant to § 14-7-1720(A) and (D), and Rule 5, SCRPC; 4.) counsel

13.)

Failed to protect Mr. Roberts right under State Constitution pursuant to Art. I, § 11 and Art. V, § 22; 5.) counsel failed to object to "prosecutions failed obligations under Brady and suppression of exculpatory evidence - effectively failing to subject the prosecution's case to meaningful adversarial testing?"

20.) Whether Mr. Roberts suffered prejudice to his 14th Amend. right to "Notice" and his 6th Amend. right "to be informed of the nature and cause of accusation"?

21.) Whether, under the standard of Alleyne, the drug quantity that triggers the statutory ~~max~~ minimum for a drug conspiracy, like the drug quantity that triggers the statutory maximum, foreseeable to the defendant, i.e., the individualized quantity, must be found by a jury beyond a reasonable doubt?

22.) Whether State has met its burden of production on the element of whether defendant "Purchased, OR Brought Into This State" alleged trafficking amounts of heroin, under the Winship standard of "proof of a criminal charge beyond a reasonable doubt"? (Tr. July 19, 2017, page 93, lines 9-10) (Emphasis).

23.) Whether State has met its burden of production and persuasion "on the essential element of trafficking heroin in regards to the "Actual Amount of heroin," under the Winship standard? (Tr. July 24-28, 2017, Page 736, lines 17-22; Page 737, lines 1-9) (Emphasis).

24.) Whether, as an example, States Exhibit 47, "that was said to [contain] heroin" and "methamphetamine, with a [combined] weight of 1.28 grams, prove that State did not meet its burden of "production and persuasion" on "Actual amounts of heroin," but only weighed a sample that [contained] heroin"? (Tr. July 24-28, 2017, page 861, lines 14-25; Page 862, lines 1-2) (Strong Emphasis); (Under the Winship standard?).

14.)

25.) Whether relief should be granted for insufficient evidence because Mr. Roberts showed that no rational trier of fact, viewing evidence in light most favorable to prosecution, could have found the essential elements of the crime beyond a reasonable doubt? (Regarding elements "Purchase or Brought Into State"; and "Actual Amount of heroin").

"The State was confident in how much a sample "weighed", but [never] offered testimony regarding "Actual amount of heroin" (Tr. July 24-28, 2017 page 837, lines 1-25 (Very Strong Emphasis))

26.) Whether trial judge committed "extrinsic fraud" when she induced Mr. Roberts "not to present his case" and "deprived him of the opportunity to be heard" on issue regarding the "alleged" state grand jury impanelment documents"? (Tr. July 24-28, 2017, page 15, lines 5-9; page 19, lines 8-16; page 85, lines 5-7)

27.) Whether "erroneous rulings" by trial judge relating to "impanelment documents" and the "non-disclosure" of documents constitute a "fraudulent concealment"?

28.) Whether Mr. Roberts is entitled to relief from judgment for extrinsic fraud on theory that by reason of the fraud it prevented him from fully exhibiting and trying his case, there never has been a real contest before the court of the "subject matter of the action"? (Tr. July 24-28, 2017, page 15, lines 5-9; page 19, lines 8-16; page 73, lines 3-6; page 85, lines 5-7).

29.) Whether Mr. Roberts was deprived of sufficiently specific information to "prepare a defense" and to be protected against surprise at trial, and prevented from asserting his constitutional protections against double jeopardy?

30.) Whether PCR court failed to analyze the prejudice Mr. Roberts suffered to his Sixth Amend. right to self-representation, under the standard of State V. Fuller, 337 S.C. 236, when Court failed to conduct hearing on his request to proceed pro se at trial?

15.)

* Point 1 *

Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State ... when Mr. Roberts was denied the "right to effective assistance of counsel" pursuant to the Sixth Amendment of the United States Constitution, when trial counsel consistently refused to/or failed to object and cite controlling precedent regarding Mr. Roberts due process right "to mount or prepare a defense" (as a substantive right), and his procedural right of due process to obtain the transcript of the state grand jury, to which the law entitles him, pursuant to § 14-7-1720 (A) and (D), and Rule 5, SCRCP, that was denied him by the trial judge each time Mr. Roberts moved for production of the impanelment documents. (Tr. July 24-28, 2017, page 15, lines 5-9; page 19, lines 8-16; page 85, lines 5-7). See., United States v. Williamson, 183 F.3d 458, 463-64 (5th Cir. 1999) (counsel's failure to cite directly controlling precedent was ineffective assistance because it was objectively unreasonable and resulted in prejudice to defendant). It is undisputed that Mr. Roberts had a right - indeed, a constitutionally protected right - to 1.) "Mount or prepare a defense" and to the "due process of law", both required and protected under the Fourteenth Amendment; and 2.) Mr. Roberts had a protected right to the "effective assistance of counsel" pursuant to the Sixth Amendment of the United States Constitution. Mr. Roberts was also infringed his right to "due process of law" under the South Carolina Constitution pursuant to S.C. Const Art. 1., § 3 and S.C. Const Art. 1., § 14. Trial counsel's deficient performance prejudiced the defense and prevented Mr. Roberts from "presenting a complete defense to the jury", thereby infringing his Sixth Amendment right to a fair trial. There is a reasonable probability that, but for counsel's unprofessional errors,

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the result of the proceeding would have been different. For example, after the trial judge erroneously and unlawfully denied Mr. Roberts motion for the production of the state grand jury impanelment documents, when she stated: "You don't get those, sir. In South Carolina, All Grand Jury proceedings are secret. Nobody gets those" (Tr. July 24-28, 2017, page 15, lines 7-9), trial judge then questioned Mr. Roberts stating: "I guess I'm trying to figure out what is it that you think you would be able to use from the State Grand Jury record?" (Tr. July 24-28, 2017, page 19, lines 8-10). In response, Mr. Roberts answered the judge, stating: "Well, I'm actually going to show that no State Grand Jury even occurred" (Tr. page 19, lines 11-12). Per South Carolina Supreme Court, Court Administration's correspondence to Mr. Roberts... "no court reporter had been assigned to record state grand jury proceedings on the dates of Mr. Roberts indictments, therefore, there is no transcript available." Hence the concealment of this exculpatory evidence by trial judge and suppression of the same by the prosecution. Therefore, the result of the proceeding would have been different had the sentencing jury been aware that probable cause for the "alleged charges" Mr. Roberts was made to stand trial for - had not been found by a state grand jury (emphasis).

Further, what use the petitioner might have made of the knowledge wrongfully [denied] him or what profit he might have gained by it may not be assumed. Even if that assumption might be made, such a substantial error spoils all it touches. Infringements upon constitutional rights may never be so lightly regarded. Stroble V. California, 343 U.S. 181, 198. In United States V. Baldi, 104 F. Supp. 321, 328 (E.D. Pa.) "the defendant was denied due process of law by the

17.)

states suppression of evidence relevant only to the degree of punishment for felony murder. The court set aside the ... "trial, verdict, conviction and judgment of sentence ..." and granted the writ of habeas corpus. (Emphasis added). The decision was affirmed by the Court of Appeals in, United States V. Baldi, 195 F.2d 815 (C.A.3), cert. denied 345 U.S. 104, reh. denied 345 U.S. 946.

When the Court of Appeals found that the petitioner had been deprived of due process of law, that the court was not free to speculate upon what part of the trial might not have been tainted by the State's suppression of evidence. Griffin V. United States, 336 U.S. 704, 708-709; Blackburn V. Alabama, 361 U.S. 199, 206.

Such is the fact, in the instant case, where petitioner's due process of law was denied him by the State's suppression of evidence, exculpatory in nature and trial judges [concealment] of the same infringed Mr. Roberts' right to "mount or prepare a defense"; infringed his "right to present a full and complete defense to the jury"; thus, infringing his "Sixth Amendment right to a fair trial."

Mr. Roberts asserts that the due process right to "mount or prepare a defense" is Constitutionally protected and its infringement results in [structural error] rendering the adversarial process null and void or non-existent, resulting in fundamental unfairness not subject to harmless error analysis inquiry - as the effect of the error is unquantifiable and indeterminate. The structural error deprived Mr. Roberts of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence. ... And no criminal punishment may be regarded as fundamentally fair. Thus, the deprivation of the Sixth Amendment

18.)

right to the "effective assistance of counsel" for the failure to object and cite controlling precedent regarding Mr. Roberts' right to mount or prepare a defense; his right to present a full and complete defense; and his right to a fair trial, must also be deemed as [structural error] and that the conviction or the sentence was in violation of the Sixth Amend. of the United States Constitution regarding Mr. Roberts Federally protected rights to the "Effective Assistance of Counsel" and his Federally protected rights to the "Due Process of Law" pursuant to the Fourteenth Amend. as well as his rights under the South Carolina State Constitution pursuant to S.C. Const Art. 1, § 14 and S.C. Const. Art. 1, § 3, thus meeting the standard of ~~Strickland v. Washington~~ ^{E.R.} the violation of due process of law.

* Point 2 *

Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State... when Mr. Roberts was infringed his Federally protected right under the Sixth Amend. to the United States Constitution to the "Effective Assistance of Counsel" and his Federally protected right under the Sixth Amend. to the United States Constitution to his right of "Confrontation of Witnesses". Mr. Roberts suffered prejudice to his Sixth Amend. right to "effective assistance of counsel" and his Sixth Amend. right to "confrontation", under the standard of Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d, when "testimonial lab reports" was read into the record by Agent Justin Wingo (Tr. July 24-28, 2017, page 703, lines 6-12; page 710, lines 15-23; page 713, lines 4-12); and officer Misael Vasquez (Tr. July 24-28, 2017, page 658, lines 11-15; page 659, lines 20-24; page 660, lines 21-25; page 675, lines 9-12; page 675, lines 16-18), establish-

19.)

-ing illegal nature of substances defendant "allegedly" possessed, prepared pursuant to police investigation and admitted to establish element of charged crimes, was "testimonial hearsay" subject to the Confrontation Clause, even though report was admitted at trial under the business record exception to the hearsay rule. In the case where the prosecution used certificates from state laboratory analysts to prove that material linked to the defendant was cocaine, the United States Supreme Court ruled this practice violated the defendant's Sixth Amendment rights under the Confrontation Clause. This clause guarantees a defendant the right to confront their accusers in court. The Court, citing the Crawford v. Washing-
-ton decision, determined that the certificates were equivalent to testimony that should have been presented in person at trial, as they were critical in proving the nature of the substance involved. The Supreme Court rejected arguments that these certificates were just neutral, scientific results or akin to traditional official records, emphasizing that the analysts who prepared them needed to be available for cross-examination.

The case was reversed and remanded, reaffirming that testimonial evidence cannot be used against a defendant without giving them the opportunity to cross-examine the witness who created such evidence. See, Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009); also see, Bullcoming v. New Mexico, 564 U.S. 647 (2011).

Mr. Roberts was infringed his Federally protected right as well as his rights under State Constitution. See, S.C. Const. Art. I, § 14 "The right... to be confronted with the witnesses against him".

There can be no doubt that a defendant has a constitutional right to be confronted by the witnesses against him. Art. I, Section 18, of the 1895 Constitution of South Carolina provides: "In all

20.)

criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him; This constitutional right is restated in Section 17-506 of the 1952 Code of Laws of South Carolina, which provides: "Every person accused shall, at his trial, have a right to meet the witnesses produced against him face to face." The defendant cannot be denied the right to cross-examine the witnesses against him. State V. McNinch, 12 S.C. 89. The personal presence of a witness is required so that the accused may cross-examine him. State V. Bigham, 133 S.C. 491, 131 S.E. 603. "Affidavits and depositions are inadmissible in evidence in a criminal case." State V. Hester, 137 S.C. 145, 134 S.E. 885; State V. Murphy, 48 S.Ct. 1, 25 S.E. 43. Thus, the infringement of Mr. Roberts Sixth Amendment right to "Effective Assistance of Counsel"; his Sixth Amendment right to "Confrontation" as well as his right under State Constitution pursuant to S.C. Const. Art. I. § 14 and Art. I, Section 18, of the 1895 Constitution of South Carolina,

Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State.

* Point 3 *

Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State... when Mr. Roberts was denied the "right to effective assistance of counsel" and suffered prejudice to his defense when counsel was not afforded discovery in the form of the state grand jury impanelment documents. Relying on Supreme Court precedent - the court

21.)

held in Hunt V. Mitchell, 261 F.3d 575, 583 (6th Cir. 2001) (Prejudice is presumed when counsel was not afforded discovery before voir dire).

Mr. Roberts was denied discovery in the form of the state grand jury impanelment documents each time he requested them by the trial judge (Tr. July 24-28, 2017, page 15, lines 5-9; page 19, lines 8-16), without an objection by trial counsel, thus Mr. Roberts or trial counsel had not been afforded discovery before voir dire, thereby "prejudice" may be [presumed] to Mr. Roberts right to "effective assistance of counsel", "his right to mount or prepare a defense", and his right to a fair trial."

Therefore, Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State.

* Point 4 *

Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State... when Mr. Roberts was denied his Federally protected right to "the effective assistance of counsel" under the standard of Strickland V. Washington, 466 U.S. 668 (1984), when trial counsel failed in [his duty] to advocate the defendant's cause. For example, Mr. Roberts moved for the production of the "state grand jury impanelment documents in order that he may be able to exercise his right under the Fourteenth Amendment to "mount or prepare a defense" and exercise his procedural due process pursuant to § 14-7-1720(A) and (D) and Rule 5, SCRCP - these substantial and procedural rights were denied him without an objection from trial counsel resulting in counsels failure to advocate the defendant's cause (Emphasis). (Tr. July 24-28,

22.)

2017, page 15, lines 5-9; page 19, lines 8-16; page 17, lines 16-25; page 73, lines 3-6; page 85, lines 5-7), Mr. Roberts was denied impeachment documents to which he is Entitled to by law (§ 14-7-1720(A) and (D) and Rule 5, SCRCP); denied his substantial right to "mount or prepare a defense"; his right under State Constitution pursuant to Art. I. § 11 and Art. V. § 22 to challenge whether he was indicted by a legally established and constituted grand jury; and his Sixth Amend. right to "Confrontation" and a fair trial.

Trial counsel failed to advocate the defendant's cause when he failed to object and cite controlling precedent regarding the infringement of any of these Federally protected rights and also the rights under State Constitution, thereby meeting the standard of ~~State Habeas Corpus~~ ^{E-Ro} A violation of the 6th, and 14th Amend.

* Point 5 *

Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State... when Judge Jefferson infringed Mr. Roberts "due process right to have a judge assigned to his case in a manner free from bias or the desire to influence the outcome of the proceedings, when she intentionally [concealed] exculpatory evidence or information that the "state grand jury impeachment documents" did not "legally exist".

In a [collusion] with the prosecution to infringe Mr. Roberts substantial right to "mount or prepare a defense", Judge Jefferson committed crimes of moral turpitude when she "lied", "mislead", and "deceived" the Court and Mr. Roberts legal rights committing "extrinsic fraud", "fraud upon the court" and fraud upon the legal rights of Mr. Roberts by her erroneous rulings denying him discovery in a criminal

23.)

case. Judge Jefferson, in her rulings "concealed documents in a litigation," exculpatory in nature, as the state grand jury impeachment documents do not "legally exist" as evidenced by South Carolina Supreme Court, Court Administration. Jefferson "concealed documents in the course of a litigation" - to which Mr. Roberts was entitled by law. See, Evans V. State, 363 S.C. 495, 509-514, 611 S.E.2d 510, 518-520 (2005) (explaining a multitude of ways a criminal defendant may challenge an indictment based upon the state grand jury proceedings and the documents to which a defendant [is] entitled during the discovery phase regarding the state grand jury proceedings). At trial, before the swearing of the jury, Mr. Roberts moved for the production of the state grand jury impeachment documents when he stated: "I would also like the State Grand Jury minutes" (Tr. July 24-28, 2017, page 15, lines 5-6), trial judge erroneously ruled: "You don't get those, sir. In South Carolina, [All] Grand Jury proceedings are secret. [Nobody] gets those" (Emphasis) (Tr. page 15, lines 7-9). Her ruling was an intentional scheme to commit "fraud upon the court," it was deceitful, misleading and "a lie" thus committing extrinsic fraud by preventing Mr. Roberts from presenting a full and complete defense to the sentencing jury, thereby denying his Sixth Amendment right to "a fair trial" and his Fourteenth Amendment right to an impartial adjudicator. The Court has held that "a fair trial in a fair tribunal is a basic requirement of due process," and that "a necessary component of a fair trial is an impartial judge. Weiss V. United States, 510 U.S. 163, 178 (1994) (internal citation omitted). Fairness requires not only "an absence of actual bias in the trial of cases," but also rules and safeguards "to prevent even the probability of unfairness." In re Murchison, 349 U.S. 133, 136 (1955). Mr. Roberts asserts that this error is [Structural] and prejudice should be presumed (Emphasis).

24.)

Next, after denying defendant "discovery" (Tr. Page 15, lines 5-9) and "prejudicing" the defendant's substantive [right] to "mount or prepare a defense" and also his procedural [right] pursuant to § 14-7-1720(A) and (D) and Rule 5 SCRCP, the trial judge "questions" the defendant, asking: "I guess I'm trying to figure out what it is that you think you would be able to use from the State Grand Jury record?" (Tr. Page 19, lines 8-10). Defendant responded: "Well, I'm actually going to show that [no] State Grand Jury even occurred" (Emphasis) (See Court Administrations corr. dated 11-6-17) (Tr. July 24-28, 2017, Page 19, lines 11-12). Trial judge replied: "Oh, it happened because I have the indictments" (Tr. Page 19, lines 13-14). Mr. Roberts then stated to the judge: "I have the indictment papers, but that doesn't mean it happened" (Tr. Page 19, lines 15-16).

Without question, defendant's desire to view the documents related to the grand jury proceedings was well-founded in the law and even [conceded] by the prosecution (Tr. Page 15, lines 14-18). See, Evans v. State, 363 S.C. 495, 509-514, 611 S.E.2d 510, 518-520 (2005) (explaining a multitude of ways a criminal defendant may challenge an indictment based upon the state grand jury proceedings and the documents to which a defendant is entitled during the discovery phase regarding the state grand jury's proceedings). Judge Jefferson violated Mr. Roberts substantive and procedural due process of law; infringed his right to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him; infringed his right to present a full and complete defense to the sentencing jury; infringed his right under the Sixth Amendment to a fair trial; committed extrinsic fraud by concealing documents (or lack of) during the course of a litigation and infringing his right to an impartial finder of fact.

25.)

Implicit is the right of an individual to be tried in a state court system without even the hint of impartiality; that right has been infringed by the trial judge. The State judiciary was involved in the repression of Mr. Roberts constitutional rights, for example, trial judge infringed Mr. Roberts Sixth Amendment right to "self-representation", when she stated: "While he's allowed, [constitutionally] to represent himself, I do not perceive he has sufficient grasps of the rules such that he would be able to protect his own interests. And I am not going to relieve you as counsel" (Tr. July 24-28, 2017, Page 29, lines 17-20), surely, this is an unreasonable application of clearly established Supreme Court Precedent; and the error is [structural] as the right is either respected or denied. In Faretta V. California, 95 S.Ct. 2525 "On grant of certiorari, the Supreme Court, Mr. Justice Stewart, held that a defendant in a state criminal trial has a constitutional right to proceed without counsel when he voluntarily and intelligently elects to do so, and that the State [may not] force a lawyer upon him when he insists that he "wants to conduct his own defense". "Sixth Amendment does not provide merely that defense shall be made for accused but grants to accused personally the "right" to make a defense; right to self-representation to make one's own defense personally is necessarily implied by structure of the Amendments." U.S.C.A. Const. Amend. 6; 28 U.S.C.A. § 1654; Fed. Rules Crim. Proc. rule 44, 18 U.S.C.A. "A defendant has a constitutional right to self-representation under the Sixth and Fourteenth". City of Columbia V. Assa'ad-Faltas, Supreme Court of South Carolina, June 21, 2017 420 S.C. 28; trial judge infringed this right to prevent the exercise of this right to collaborate with prosecution.

On the morning of trial, and also a week before trial at a

26.)

Pre-trial hearing on July 19, 2017 - despite Mr. Roberts invocation to exercise his Sixth Amendment right to Self-Representation, trial judge failed to conduct a hearing on defendant's request to represent himself, made on the morning of trial. In State V. Fuller, Supreme Court of South Carolina 337 S.C. 236 "Failure to [conduct hearing] on murder defendant's request to represent himself, made on morning of trial, was reversible error." Failure to conduct hearing precluded both Full assessment of purpose behind defendant's request and determination of what effect granting request would have had on proceedings. U.S.C. A. Const. Amend. 6.; this failure to conduct hearing violated due process of law

Deprivations of the Sixth Amendment right to self-representation are [structural errors] not subject to harmless error review because "the right is either respected or denied; its deprivation cannot be harmless." McCoy, 138 S.Ct. at 1511 (quoting McKaskle, 465 U.S. at 177 n.8, 104 S.Ct. 944.

Mr. Roberts contends that the Fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty (McCoy, 138 S.Ct. at 1511 (quoting Weaver, 137 S.Ct. at 1908), was violated and offended due process of law.

27.)

Thus, Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State ... when Judge Jefferson infringed Mr. Roberts' due process right to have a judge assigned to his case in a manner free from bias or the desire to influence the outcome of the proceedings.

* Point 6 *

Mr. Roberts conviction or the sentence was in violation of the Constitution or laws of this State ... when Mr. Roberts was infringed his right to an impartial jury trial when conviction was obtained through use of false evidence, including the indictment itself as it was the result of the prosecutions "rubber-stamp". State also solicited false evidence and testimony that had "not" been presented to a grand jury, therefore, was not apart of the finding of a grand jury. See Court Admin. Correspondence dated 11-6-17, stating: "no court reporter was assigned to record grand jury proceedings, therefore, no transcript is available," this exculpatory evidence is [material] and was suppressed in the trial of Mr. Roberts (Tr. July 24-28, 2017, page 15, lines 5-9; page 19, lines 8-16; page 73, lines 3-6; page 85, lines 5-7). It is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment. The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." Napue V. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed. 2d 1217 (1959) (citations omitted); see also, Riddle V. Ozmint, 369 S.Ct. 39, 47-48, 631 S.Ct. 2d 70, 75 (2006) ("The failure to correct false evidence is as reprehensible as its presentation," (citing Washington V. State,

28.)

324 S.C. 232, 235, 478 S.E. 2d 833, 834-35 (1996)). In addition, "the suppression by the prosecution of evidence favorable to an accused upon request (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7), violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963).

Had the sentencing jury been aware that the "state grand jury impanelment documents" did not exist because a grand jury had [not] been impaneled, therefore, had not viewed evidence of probable cause, the result of the proceeding would have been different, as Mr. Roberts had not been found culpable of said offenses. See, Fullwood v. Lee, 290 F.3d 663 "Right to jury trial guarantees to the criminally accused a [fair] trial by a panel of [impartial], indifferent jurors, and failure to accord an accused a [fair hearing] violates even the minimal standards of due process. U.S.C.A. Const. Amendments. 5, 6, 14. Important element of fair trial is that "jury consider only relevant and competent evidence bearing on issue of guilt or innocence." In the instant case, the State suppressed "critical evidence" and "misrepresented to the jury that a grand jury convened and viewed evidence upon which probable cause was found", although the defendant was never found "culpable" for "alleged charges" by a grand jury, hence the suppression of the state grand jury impanelment documents by the prosecution, and trial judges erroneous rulings denying these documents to which Mr. Roberts was entitled to by law (See Evans v. State, 363 S.C. 495, 509-514, 611 S.E. 2d 510, 518-520 (2005) (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16); see also, Court Administration correspondence dated 11-6-17 From Court Reporter Manager, Desiree Allen (Emphasis).

29.)

An "impartial jury" is a jury who bases its verdict on competent [legal] evidence - needless to say that the evidence, testimony, erroneous rulings suppressing exculpatory evidence that would clearly demonstrate that the grand jury had not convened was the result of a "fraud upon the court" and fraud upon the legal rights of Mr. Roberts, infringing his right to an "impartial jury."

* Point 7 *

Mr. Roberts conviction or the sentence was in violation of the Const-
-itution of the United States or the Constitution or laws of this State... when
the State failed to "offer proof beyond a reasonable doubt of every fact necessary
to constitute the crime" with which the defendant is charged. In re Winship,
397 U.S. 358, 364 (1970). Proof of a criminal charge beyond a reasonable doubt
[is] constitutionally required. Miles v. United States, 103 U.S. 304, 312, 26 L.
Ed. 481 (1881); Speiser v. Randall, 357 U.S. 513, 525-526, 78 S.Ct. 1332,
1342, 2 L.Ed. 2d 1460 (1958). The State failed to prove beyond a reasonable doubt
that the amount of heroin or any mixture containing heroin was 4 grams or
more but less than 14 grams; 14 grams or more but less than 28 grams; and 28
grams or more. (Emphasis). On cross-examination, defense counsel questioned
Agent Justin Wingo concerning [all] lab reports he testified to, asking the
[percentage of heroin] in the samples? (Tr. Page 736, lines 17-18), The Case
Agent answered: "I'm a narcotics agent. I am [not] a chemist. I am not
in the lab. And I [couldn't] tell you how they test that stuff. You would have
to [reference] a chemist." (Tr. Page 736, lines 19-22) (Emphasis). Defense Coun-
-sel then states: "Okay. So if I mix a gram of heroin with 27 grams of baby
powder, it's going to come up, yep, that sure does weigh 28 grams. But that
doesn't mean it's 28 grams of heroin, does it? The Case Agent answers: "That
means there's heroin in there, sir. But, again, I am [not] a chemist. (Tr. Page 737,

30.)

lines 1-9). Accordingly, the State failed to present "sufficient evidence regarding essential element of "how much actual heroin", the State failed to prove beyond a reasonable doubt that the amount of heroin or any mixture containing heroin was 4 grams or more but less than 14 grams; 14 grams or more but less than 28 grams; and 28 grams or more. The State failed to produce sufficient evidence regarding the essential element of "how much actual heroin" thereby not bringing the fact into issue. See, In re Winship, 397 U.S. 358, 364 (1970). Next, Lawrence ZivKovich, who is employed as a forensic scientist by SLED, testified for the state as to what a controlled substance may contain. (Tr. Page 334, lines 1-8; Page 340, lines 7-9). Mr. ZivKovich's testimony was based on the State's exhibits and whether it [contained] heroin and how much the "sample" weighed. (Tr. Page 340, lines 17-18; Page 342, lines 4-5; Page 342, lines 20-21; Page 343, lines 4-5; Page 343, lines 16-17; Page 344, lines 2-4; Page 344, lines 16-17). Mr. ZivKovich testified to what the controlled substance [contained] and the weight of that "entire" substance - but not [how much actual heroin]. For example, Mr. ZivKovich testified that State's exhibit 47 [contained] heroin "And" methamphetamine with a weight of 1.28 grams (Emphasis) (Tr. Page 342, lines 11-12). "A substance [containing] heroin "And" methamphetamine - with a "combined weight" of 1.28 grams - but how much actual heroin? What is the amount of heroin? Mr. Ziv - Kovich said in his testimony that there was heroin found in the samples, but it doesn't say how much heroin? He says the weight of this or that whole sample was so much. Could have been sand with four sprinkles of heroin in it. We don't know. The State are confident in the weight of the sample, but they did not say the sample contained half heroin, one-quarter heroin, one-eighth heroin, or even 10 percent heroin. The State [never] established how much [actual] heroin it was. There has to be sufficient proof beyond

31.)

a reasonable doubt. See, Jackson V. VA., 443 U.S. 307, 319 (1979) (habeas relief granted for insufficient evidence because prisoner showed that no rational trier of fact, viewing evidence in light most favorable to prosecution, could have found the essential elements of the crime beyond a reasonable doubt).

Even the State understands [clearly] that it hasn't proven actual amounts of heroin - which is essential element of trafficking.

Assistant Attorney General inquires to the trial judge: "Your Honor, one matter concerning the charge, I wanted to inquire for the Court. Does your 'charge include language' that any 'mixture of a substance that contains a substance', that 'the [entire mixture] counts towards the [weight] pursuant to State V. Johnson?' (Tr. Page 861, lines 14-18) (Emphasis). The trial judge responds: "I don't make any charge that would constitute a charge on the facts" ... (Tr. Page 861, lines 19-20), My charge reflects exactly what the [statute] says, which is the State [must] also prove beyond a reasonable doubt that the [amount of heroin] or any mixture "containing heroin" [was] -- and it states the amounts." (Tr. Page 861, lines 24-25; Page 862, lines 1-2 (Emphasis)).

Accordingly, the State did not meet its burden of production and its burden of persuasion as to the "actual amounts of heroin", thereby [not] bringing the fact into issue. The Due Process Clause places on the prosecution the "burden of persuasion" on "every element" of the crime charged; only rarely does the burden shift to the defendant.

Any shifting of the burden of persuasion must withstand constitutional scrutiny. Mr. Roberts' conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State.

32.)

* Point 8 *

Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State when... the State failed to "offer proof beyond a reasonable doubt of every fact necessary to constitute the crime" with which the defendant is charged. In re Winship, 397 U.S. 358, 364 (1970). Proof of a criminal charge beyond a reasonable doubt [is] constitutionally required. Miles v. United States, 103 U.S. 304, 312, 26 L. Ed. 481 (1881); Speiser v. Randall, 357 U.S. 513, 525-526, 78 S. Ct. 1332, 1342, 2 L. Ed. 2d 1460 (1958). The State failed to prove beyond a reasonable doubt that Mr. Roberts "Purchased, OR Brought Into This State" alleged trafficking amounts of heroin. For example, Just a week prior to trial at defendant's pre-trial hearing on July 19, 2017, on cross-examination, Agent Wingo gave testimony that [he] did not have any "Knowledge or evidence, nor any witness" that had informed him that Mr. Roberts was involved with any [out-of-state] purchases of heroin. (Tr. July 19, 2017, page 93, lines 9-10) (Emphasis). Special Agent, Justin Wingo - being the "Case Agent" regarding the investigation into "alleged" heroin trafficking offenses concerning Mr. Roberts, stated on cross-examination: "No sir, they [didn't] inform me that Mr. Roberts was [involved] with [out-of-state] purchases of heroin." (Tr. July 19, 2017, page 93, lines 9-10) (Emphasis!) Due Process Clause protects accused against conviction except upon proof beyond [reasonable doubt] of [every fact] necessary to constitute crime with which he is charged. U.S.C.A. Const. Amend. 14. It is an indisputable fact that if the "lead investigator/case agent" [testified] that he "did not" have any "Knowledge or evidence," or "witness" to inform him of the necessary facts to constitute the crime (Purchase, OR Brought Into This

33.)

State), then the prosecuting Attorney could not have them, and therefore, the State could not "bring the fact into issue" in order to substantiate the crime with which he was accused.

Mr. Roberts was "charged" with trafficking heroin. "The State [must] prove beyond a reasonable doubt that the defendant... purchased, brought into this State... purchase, or bring into this State", heroin.

The State failed to meet its "burden of production on every element of the offense" charged. The State failed to "bring the fact into issue" regarding "out-of-state" purchases of heroin or that Mr. Roberts "Purchased or brought into this State", heroin, at all.

There was [no] reliable detective [testimony] that they saw Mr. Roberts handle [any] drugs at all. There was "not a detective" that [ever] saw Mr. Roberts with drugs in his hand. (Tr. Page 736, lines 5-8; page 160, lines 22-24; page 436, lines 4-6) (Emphasis). The Constitution prohibits criminal convictions except upon proof beyond a reasonable doubt of [every fact] necessary to constitute the crime with which the defendant is charged. In re Winship, 397 U.S. 358, 364 (1970).

* Point 9 *

Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State... when prosecution suppressed exculpatory evidence and failed to fulfill its obligations under Brady v. Maryland and violated Mr. Roberts Due Process of Law pursuant to the 14th Amend. and his procedural due process pursuant to § 14-7-1720(A) and (D) and Rule 5, SCRPC; his 6th Amend. right to a fair trial. In Brady v. Maryland, the Supreme Court held that due process, pursuant to the 14th Amend. "requires the prosecution" to

34.)

"disclose evidence favorable to an accused upon request when such evidence is material to guilt or punishment." The Brady disclosure rule requires the prosecution to provide the defendant with any evidence in the prosecution's possession that "may be favorable" to the accused and material to guilt or punishment." State V. Simpson, Court of Appeals of South Carolina, Jan. 23, 2019 425 S.C. 522. Compliance with Brady evidence disclosure requirements is a constitutional requirement; the Brady disclosure rule is grounded in the defendant's [fundamental] [right] to a [fair] trial mandated by the Due Process Clause of the Fifth and Fourteenth Amendments. U.S.C.A. Const. Amends. 5, 14. State V. Proctor, 348 S.C. 322, 559 S.E.2d 318 (Ct. App. 2001). "Brady applies to both impeachment and exculpatory evidence." State V. Durant, Supreme Court of South Carolina, May 6, 2020 430 S.C. 98. Accordingly, prosecution suppressed exculpatory evidence that "a State Grand Jury" had [not] convened in defendant's case as evidenced by the suppression of the state grand jury "impanelment documents" upon defendant's [repeated request] for alleged documents, as well as "direct evidence" from South Carolina Supreme Court's, Court Administration's, Court Reporter Manager (Former), Desiree Allen (See., Ms. Desiree Allen's correspondence dated 11-6-17) (Enclosed).

When Mr. Roberts requested the State Grand Jury's "impanelment documents" (Tr. July 28, 2017, page 15, lines 5-9; page 19, lines 8-16; page 85, lines 5-7), the prosecution suppressed/concealed the indisputable material fact that alleged "impanelment documents" do not [legally] exist as evidenced by Court Reporter Manager, Desiree Allen (Former) of South Carolina Supreme Courts, Court Administration dated 11-6-17. Prosecution suppressed this exculpatory information, thereby, infringing Mr. Roberts

35.)

constitutional [right] to "mount or prepare a defense" and to the Due Process of law guaranteed him under the 14th Amendment.

Defendant suffered [prejudice] in that he could not "mount or prepare a defense" against "undoubtedly unfounded offenses, and could not combat the charges against him. It is "prosecutorial misconduct" to suppress favorable exculpatory evidence that would make the difference between conviction and acquittal had it been disclosed and used effectively. The suppression of exculpatory evidence violated defendant's [right] under the 6th Amendment to a fundamentally fair trial and is structural on this basis. Also, suppression of exculpatory evidence infringed his 6th Amend. right to "present a full and complete defense to the sentencing jury." Suppression of favorable exculpatory evidence by prosecution involves "a question of prosecutorial misconduct," and violated his due process of law when prosecution failed at its constitutional obligation under the rule of Brady.

When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable. Ibid.

The government notes that an incomplete response (Tr. page 15, lines 5-25) to a specific request (Tr. page 19, lines 8-16; page 85, lines 5-7) not only "deprives the defense of certain evidence," but also has the effect of representing to the defense that the evidence does not exist (emphasis).

Such is the case when prosecutor's conspired with trial judge suppressed/concealed exculpatory evidence that "impanelment documents" do not [legally] exist, defendant was prejudiced his constitutional and statutory [right] to demand that a properly established and constituted grand jury consider his case and decide whether to issue a sufficient indictment based on "probable cause" (Tr. July 28, 2017, page 73, lines 3-6). See, Art. 1. § 11).

36.)

Defendant's desire to view the documents related to the grand jury proceedings was well-founded in the law. See EVANS V. State, 363 S.C. 495, 509-514, 611 S.E. 2d 510, 518-520 (2005) (explaining a multitude of ways a criminal defendant may challenge an indictment based upon the state grand jury's proceedings and the [documents] to which a defendant is [entitled] during the discovery phase regarding the state grand jury's proceedings). A defendant [is] allowed to [obtain] and [use] the "impanelment documents" in [preparing a defense] and [ensuring] the [protection] of his [due process rights] S.C. Const. Art. 1, § 3; U.S. Const. Amend. 14.

The Court held in, Montgomery V. Louisiana, Supreme Court of the United States - Jan. 25, 2016 577 U.S. 190, "A conviction or sentence imposed in violation of a [substantive rule of constitutional law] (Brady) is not just [erroneous] but contrary to law and, as a result, [void] and it follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule."

Accordingly, Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State when prosecution suppressed exculpatory evidence regarding the "non-existence of" alleged "impanelment documents" relating to the usurpation of the grand jury's independent role by prosecutorial misconduct. (Emphasis).

* Point 10 *

Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State... when Mr. Roberts was infringed his Federally protected right under the Sixth Amendment to "be informed of the nature and cause of the accusation against him" and his Federally

37.)

protected right to "Notice" under the Fourteenth Amendment.

Prosecutors malicious and egregious acts of undermining the integrity of the grand jury as an independent body infringed defendants right to be prosecuted only upon indictment pursuant to § 17-19-10; Art. I. § 11, Art. V. § 22. A defendant has a constitutional right to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him. (See Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16); See also... S.C. Const. Art. I. § 11 and Art. 5. § 22 "[O]ne who demands and is refused the right to be tried for crime charged against him only upon an indictment presented by a legal grand jury, in instances where such indictment is required, may thereafter justly take the position that he has been deprived of life, liberty or property without due process of law in violation of the state constitution. Rector, 158 S.C. at 230, 155 S.E. at 392 (internal quotes omitted). An indictment or "notice document" issued by a grand jury which is established or constituted illegally is deemed a nullity. An indictment which is a nullity would be insufficient, as a matter of law, to give the required notice to a defendant.

In such cases, a defendant's challenge "does not assert a disqualification which affects only a member of a body otherwise lawful, nor a mere irregularity in doing [that] which the law requires, which assumes a power to act; but it goes to the [existence] of the grand jury [as a body], that it is [void] as such, and that its indictment is therefore a nullity. See, State V. Edwards, 68 S.C. 318, 322, 47 S.E. 395, 396 (1904); State V. Sanders, 251 S.C. 431, 438, 163 S.E. 2d 220, 224 (1968); State V.

38.)

Rafe, 56 S.C. 379, 34 S.E. 660 (1900); Campbell V. Louisiana, 523 U.S. 392, 398, 118 S.Ct. 1419, 1423, 140 L.Ed. 2d 551, 559 (1998); Vasquez V. Hillery, 474 U.S. 254, 263-264, 106 S.Ct. 617, 623, 88 L.Ed. 2d 598, 609 (1986) (Same) (internal quotes omitted).

Structural protections of the grand jury have been so compromised as to render the proceedings fundamentally unfair, allowing the presumption of prejudice. Bank of Nova Scotia V. United States, 487 U.S. 250, 257 (1988). While it may be presumed that a grand jury proceeding transpires with all due regularity (see United States V. Johnson, 319 U.S. 503, 512-13 (1943); see also United States V. Mechanik, 475 U.S. 66, 75 (1986) (O'Connor, J., concurring in judgment) where there is "particularized proof of irregularities in the grand jury process," this presumption of regularity... may be dispelled. Id. A violation of the Indictment Clause's requirement that an indictment must be "returned by a legally constituted and unbiased grand jury [and] valid on its face," Costello V. United States, 350 U.S. 359, 363 (1956) (internal footnote omitted) (emphasis added), is precisely the brand of "particularized proof" that overcomes any presumption of regularity. Here, the claim of fundamental unfairness relies upon not only the Fourteenth's Amendment guarantee of Due Process, but also upon its specific and emphatic guarantee that "No State shall... deprive any person of life, liberty, or property, without due process of law. There exist errors in the indictment and sentencing, moreover, the integrity, fairness, and public reputation of the proceeding were seriously affected by the 6th and 14th Amendment violations in this case (Strong Emphasis).

39.)

The regularity of grand jury proceedings is presumed absent clear evidence to the contrary; the burden is on the defendant to prove facts upon which a challenge to the legality of the grand jury proceedings is predicated. Evans V. State, 363 S.C. 495, 611 S.E.2d 510 (2005); State V. Griffin, 277 S.C. 193, 285 S.E.2d 631 (1981).

Accordingly, Mr. Roberts offers "direct and circumstantial" evidence, including the [conduct] of prosecutor; trial judge; S.L.E.D. Agent Justin Wingo and Christina Bass; and former Clerk of the State Grand Jury (James R. Parks), to demonstrate the usurpation of the state grand jury's independent role which violated the Doctrine of Separation of Powers, and infringed Mr. Roberts Sixth Amendment right to "be informed of the nature and cause of accusation against him;" and his Constitutional right to "Notice".

1.) Here, the fact that [Solicitor] appears as sole witness of grand jury is contrary to statutory law pursuant to §14-7-1550, which states: "The foreman of the grand jury or acting foreman in the circuits court of any county of the State may swear the witnesses [whose names shall appear on the bill of indictment in the grand jury room]"; 2.) Per Desiree Allen's correspondence to Mr. Roberts dated 11-6-17 as well as prior correspondence - "no court reporter was assigned to record state grand jury proceedings in defendant's case, therefore, no transcript is available" (Emphasis); 3.) At trial, before the swearing of the jury, Mr. Roberts requested the transcript from "Alleged" proceedings to which he is entitled by law (Tr. July 28, 2017, page 15, lines 5-6), and

40.)

the exculpatory evidence was "suppressed" by the prosecution and [concealed] by the trial judge when the judge stated: "You don't get those, sir. In South Carolina, All Grand Jury proceedings are secret. Nobody gets those." (Tr. July 28, 2017, page 15, lines 7-9), her ruling constituted a fraudulent concealment by an Attorney in the course of a litigation also constituting extrinsic fraud that prevented Mr. Roberts from presenting a full and complete defense to the sentencing jury. Trial judge then questioned defendant, stating: "I guess I'm trying to figure out what is it that you think you would be able to use from the State Grand Jury record?" (Tr. July 28, 2017, page 19, lines 8-10), In responding to the judges inquiry, Mr. Roberts stated: "Well, I'm actually going to [show] that no State Grand Jury even occurred, or convened to return an indictment. (Tr. July 28, 2017, page 19, lines 11-12) (Emphasis). Despite trial judges unlawful ruling and fraudulent concealment relating to the non-existence of "impanelment documents", prosecutors suppression of exculpatory evidence that the grand jury had not convened was a violation of Brady v. Maryland - A constitutional rule of law.; 4.) Art. V. § 22 of the State Constitution states in pertinent part: "the State Grand Jury, as the General Assembly may establish by general law, [shall] consist of eighteen members, twelve of whom must agree in a matter before it can be submitted to the Court (Emphasis); per Ms. Desiree Allen's corr. and the violation of § 14-7-1550 and the suppression of these documents and concealment of the same by trial judge, it can be also concluded that "twelve grand jurors did not convene as a body" on dates

41.)

of Mr. Roberts indictments, therefore, a violation of S.C. Const. Art. V. § 22; 5.) also, the very face of the indictment reads "At a session of the State Grand Jury convened in [Richland County], Columbia, S.C." - Evidence that fails to prove that any act material and essential to the offense's alleged and requisite to its consummation occurred in Richland County, Columbia, S.C., the very face of the indictment, based on the above fact that the "alleged" proceedings or impanelment did not occur in Berkeley County establishes the violation of S.C. Const. Art. I. § 11; Art. V. § 22; and § 14-7-1630(B); 6.) Mr. Roberts could not have had "Notice" or be informed of the nature and cause of the accusation by an illegally constituted grand jury; Christina Bass' [letter] labeled [memorandum] dated 6-9-2016 that secured the unlawful detention of Mr. Roberts approximately [60 days] after date of indictment, "after being illegally held for 4 Months in Richland County from the date Feb. 8, 2016 - June 9, 2016, was "not accompanied" with [any] warrants issued as a result of any "alleged" indictments (strong emphasis), yet Mr. Roberts was illegally held in Hill Finklea Detention Center on 6-9-2016 via Christina Bass' [letter] labeled [Memorandum], which is [not] a "commitment order", nor "a judicial determination of probable cause... i.e. an arrest warrant (emphasis). (See Fourth Amendment.)

Accordingly, sufficient direct and circumstantial evidence demonstrates that independent role of the state grand jury had been usurped by prosecutorial misconduct and suppression of exculpatory evidence which amounts to a massive violation of due process of law, a Federally protected right under the Fourteenth Amendment to the U.S. Const.

42.)

* Point 11 *

Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State... when 1.) Government/State Agents, Officers, Actors and Employee's formed a "Criminal Conspiracy" against Mr. Roberts by their "Agreement between two or more people to violate Federal Law" pursuant to the Fourth and Fourteenth Amendments prohibition against Unreasonable searches and [seizures]... and 2.) Agents, Officers and State Actors unlawfully seized, confined, Kidnapped, or carried away Mr. Roberts by any means whatsoever without "Authority of Law".

On February 8, 2016 Rogue Agent Wingo unlawfully seized, Kidnapped, or carried away Mr. Roberts from the 9th Judicial Circuit to the 5th Judicial Circuit and served Mr. Roberts with an "arrest warrant" (Warrant # 2015 A4700100017) (Enclosed Attached as Exhibit). This "arrest warrant" was not 1.) Certified for Service; 2.) it was [not] signed by an issuing judge (Emphasis). The Court has held, in the context of an arrest warrant, that such a warrant is not lawful where the issuing judicial officer failed to sign the warrant on the space provided on the warrant form. Davis v. Sanders, 40 S.C. 507, 19 S.E. 138 (1894). "Although the State would characterize such an omission as merely procedural or ministerial, we disagree. The Davis Court gave a persuasive explanation of the signature requirement, Albeit in the context of an arrest warrant" when it is remembered that a sheriff or other officer, who undertakes to arrest a citizen under a warrant, is bound to show his warrant, if demanded, to the person proposed to be arrested, and if he refuses to do so the arrest may be lawfully resisted [internal citation omitted] we think it would

43.)

be an insufficient justification for an arrest. Under South Carolina law an unsigned warrant is not a warrant, and is not capable of being issued within the meaning of § 17-13-140. see also., Davis, supra (good faith irrelevant where warrant is not signed).

The DAVIS requirement that a warrant must be signed by the issuing judicial officer in order to be complete is a common law decision predicated on public policy considerations.

The [signature] is the [assurance] that a judicial officer "has found that law enforcement has made the requisite probable cause showing," and serves as [notice] to the citizen upon whom the warrant is served that it is a validly issued warrant.

Without the signature, it is merely an "unfinished paper."

DAVIS, supra; see also, Dubose v. Dubose, 90 S.C. 87, 72 S.E.

645 (1911). (State v. Wimbury, 9 S.C. 309) A warrant issued

without probable cause violates the Fourth Amendment of the United States Constitution and Article 1, § 10 of the South Carolina Const -

- itution and makes any seizure based solely on the warrant un-

- lawful. Mr. Roberts was unlawfully imprisoned in Alvin S. Glenn Detention Center in the 5th Judicial Circuit for "Alleged" crimes said

to have occurred in Berkeley County, the 9th Judicial Circuit for

4 months (Feb. 8, 2016 - June 9, 2016), by way of an unlawful

seizure that was accomplished by violation of South Carolina

law that "an unsigned warrant is not a warrant, and is not capable of being issued within the meaning of § 17-13-140.

Despite this violation of constitutional and statutory

law - this "unfinished paper" was "filed" by James R. Parks, Clerk of the State Grand Jury (Emphasis).

44.)

Next, after being unlawfully imprisoned "the jurisdiction over" in the 5th Judicial Circuit (Alvin S. Glenn Detention Center) for 4 months (Feb. 8, 2016 - June 9, 2016) in "the wrong Judicial Circuit (As no crimes or offenses were alleged to have occurred or had been consummated in the 5th Judicial Circuit (Columbia)).

On June 9, 2016 Agent Justin Wingo "unlawfully seized, Kidnapped, or carried away" Mr. Roberts "without the authority of law" to the 9th Judicial Circuit (Hill Finklea Detention Center) (Berkeley County) and secured Mr. Roberts' illegal detention by way of "a letter" written by a "Christina Bass" that was "labeled" [Memorandum] (Emphasis). This "letter" labeled [Memorandum] was "accepted" by Corporal Frederick Samuels of Hill Finklea Detention Center in violation of Mr. Roberts' Federally protected right under the Fourth Amendment "to be free from unreasonable searches or [seizures]."

The Fourth Amendment, applicable through the Fourteenth Amendment to the States, provides: "The right of the people to be secure in their persons... against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause... particularly describing the place to be searched, and the persons or things to be [seized]. Christina Bass, Justin Wingo, and Corporal Frederick Samuels... did agree to violate Federal law (Kidnapping and the infringement of Mr. Roberts' Federally protected right pursuant to the Fourth Amend.); by their knowing and willing participation; and the overt act in furtherance of conspiracy... which was the "letter" labeled a [Memorandum] written by Christina Bass at the direction of

45.)

Agent Justin Wingo; and the "unlawful confinement" and "detention" of Mr. Roberts without Warrant, Indictment, or Commitment Order - hence, the "letter labeled memorandum" dated June 9, 2016 (Exactly 58 Days after date's of indictments (April 12, 2016)) (Albeit, rubber-stamped).

"To garner conspiracy conviction, there must be proved (1) Agreement between two or more people to violate Federal law; (2) defendant's knowing and willing participation; and (3) an overt act in furtherance of conspiracy". United States V. Rafiekian.

* § 16-3-910 Kidnapping *

"A person who [unlawfully seizes], [confines], inveigles, decoys, [Kidnapps], abducts, or [carries away] any other person [by any means whatsoever] [without authority of law]... is guilty of a felony and, upon conviction, must be imprisoned for a period not to exceed thirty years."

Accordingly, Agent Justin Wingo, did "unlawfully" "seize" Mr. Roberts on June 9, 2016 from Alvin S. Glenn Detention Center in Columbia, "without authority of law", and did "carry him away" to Hill Finklea Detention Center in Berkeley County, by means of his vehicle, and did cause Mr. Roberts to be "unlawfully confined" via a "letter" that was "labeled" a "memorandum", written by a [Christina Bass] of SLED, and supplied to a [Corporal Frederick Samuels] of Hill Finklea Detention Center as "an overt act towards carrying out such unlawful agreement, confederation, or conspiracy". See, § 16-3-920. Conspiracy to Kidnap....

46.)

... * §16-3-920. Conspiracy to Kidnapp. *

"If two or more persons enter into an agreement, confederation, or conspiracy to violate the provisions of Section 16-3-910 and any of such persons do any overt act towards carrying out such unlawful agreement, confederation, or conspiracy, each such person shall be guilty of a felony and, upon conviction, shall be punished in like manner as provided for the violation of Section 16-3-910."

The substance of [Christina Bass]' "letter" labeled "memorandum" was unlawful to secure Mr. Roberts illegal detention and imprisonment and not compatible with Fourth Amendment principles of law; and it clearly establishes an agreement, confederation, or conspiracy between "Christina Bass", "Agent Justin Wingo", and "Corporal Frederick Samuels". "The gravamen of criminal conspiracy is an [agreement] or [combination]". Code 1976 §16-17-410.

Required mens rea for crime of Kidnapping is Knowledge. Christina Bass' "letter" labeled "memorandum" is sufficient to show that parties knew of and intended to participate in an [illegal] act to deprive Mr. Roberts of his Federally protected rights under the 14th and 4th Amend. to be free from unreasonable seizures. Agent Justin Wingo and Christina Bass with Corporal Frederick Samuels entered into an agreement to commit a crime of Kidnapping, Conspiracy to Kidnap; and criminal conspiracy. Therefore, Mr. Roberts conviction or the sentence was in violation of the Const -

47.)

- itution of the United States or the Constitution or laws of this State.

* Exhibits *

1.) Exhibits A-1; Exhibit B; Exhibit C and Exhibit D, being direct evidence from Former Court Reporter Desiree Allen - clearly demonstrates that 1.) "there was no court reporter assigned to record state grand jury proceedings on dates of Mr. Roberts indictments"; and 2.) "there is no transcript available", therefore, based on this evidence presented one may easily come to the conclusion that the state grand jury's role of being an independent buffer had been usurped by prosecutorial misconduct in violation of the doctrine of separation of powers and Art. I, § 11 and Art. V, § 22 of S.C. State Constitution.

2.) Exhibits A-2 (Lines 5-9); Exhibit B-2 (Lines 8-16); and Exhibit E (Lines 5-7), being direct evidence of 1.) Suppression of exculpatory evidence favorable to Mr. Roberts defense that the "impanelment documents" did not legally exist in violation of Brady v. Maryland and due process of law pursuant to the 14th Amend. and section 14-7-1720(A) and (D) and Rule 5, SCRCP; 2.) Trial judge's infringement of Mr. Roberts right to "mount or prepare a defense" by her erroneous rulings denying discovery in a criminal; 3.) Trial judge's infringement of Mr. Roberts right to "present a full and complete defense to the jury"; 4.) Extrinsic fraud committed

48.)

by trial judge when she "concealed documents during the course of a litigation" and induced Mr. Roberts not to present his case resulting in "fraud upon the court" and upon "the legal rights of Mr. Roberts; 5.) Trial judges infringement of Mr. Roberts right "to a fair trial in a fair tribunal" and his "right to have his case heard by a fair and impartial judge; 6.) Trial judge infringed "his right to make his own defense"; 7.) Trial judge, by her erroneous rulings constituted the denial of Mr. Roberts "constitutional right to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him" pursuant to S.C. Const. Art. I. §11 and Art. V. §22, see Exhibit D-2 (Lines 3-6).

3.) Exhibit C-2 (Lines 6-21), being direct evidence of trial judges infringement upon Mr. Roberts 6th and 14th Amendment rights to "Self-Representation" and his right "to make his own defense"; and no on record colloquy.

4.) Exhibit E-2, circumstantial evidence demonstrating that even (R. Brady Vannoy, Esquire) was "likewise unable to find anything in the public index referencing my charges against Mr. Roberts approximately 11 months after date's of "Alleged" indictments (April 12-13, 2016). On the bottom of this correspondence (Exhibit E-2, dated March 7, 2017), it states: "Per the Deputy Solicitor, you are being held on Federal charges" - which is untrue and displays the collusion of the prosecutors.

49.)

5.) Exhibit F-1, is a print-out of public index that came enclosed with (R. Brady Vannoy, Esquire's correspondence) (Exhibit E-2), that indisputably displays that Mr. Roberts was "Booked In: 2016-6-09 at 17:18:00 hrs" (albeit after being illegally imprisoned in Alvin S. Glenn Detention Center in the 5th Circuit from February 8, 2016 to June 9, 2016), and this print-out says "Bond Not Set" (Emphasis)(Emphasis).

6.) Exhibit F-2, (Lines 6-12); Exhibit G-2, (Lines 13-23); Exhibit H-2, (Lines 1-12); Exhibit I-2, (Lines 5-18); Exhibit J-2, (Lines 21-24); Exhibit K-2, (Lines 18-24); and Exhibit L, (Lines 11-15), are clear evidence of the infringement of Mr. Roberts right to the "effective assistance of counsel" and the violation of his right to "Confront the witnesses against him" pursuant to the Sixth Amendment and the standard set out in Crawford V. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L. Ed. 2d, when "law enforcement lab reports were read into the record by Agent Justin Wingo and Misael Vasquez, establishing illegal nature of substances defendant "allegedly" possessed and admitted to establish element of "charged crimes", was "testimonial hearsay". These exhibits clearly demonstrate not only the violation of Mr. Roberts Sixth Amendment right to "Confrontation" but also his Sixth Amendment right to "effective assistance of counsel"; his Sixth Amendment right to a "fair trial"; and his Fourteenth Amendment to the "due process of law", this is indisputably contrary to law and Supreme Court precedents.

50.)

7.) Exhibit G-1, Filed July 6, 2016 by Former Clerk of Berkeley County Court of General Sessions, Mary P. Brown - in regards to "jurisdiction" states: "SLED has jurisdiction over you. We here at the Clerk Office have [no] info. You need to contact Berkeley County Sheriff's Office". (Emphasis).

This exhibit clearly demonstrates that no warrants issued as a result of any indictments and that this circumstance is in violation of the Fourth Amendment to the U.S. Const. and Rule 3. Disposition of Arrest Warrant (c) -
- albeit, no arrest warrants were ever issued (Emphasis).

8.) Exhibit H-1, clearly establishes ... 1.) No warrants had issued as a result of any "alleged indictments" nor based on "probable cause for any crime"; 2.) There was no "commitment order" as of June 9, 2016 - hence the "letter labeled memorandum"; 3.) This "letter labeled memorandum" is dated approximately 58 days [after] date of indictment (April 12, 2016), yet "a letter labeled memorandum" is used to secure Mr. Roberts unlawful detention - no warrants! ; no commitment order! ; 4.) Exhibit H-1, establishes an "agreement between two or more people (Agent Justin Wingo, Christina Bass, and Frederick Samuels), to violate Federal law (Fourth Amend. unreasonable seizure), and their "willing and knowing participation" to also violate section 16-3-910 Kidnapping and section 16-3-920 Conspiracy to Kidnap; and the [overt act] in furtherance of conspiracy, which was the act by Christina Bass supplying the "letter labeled memorandum" and Frederick Samuels "accepting" the "letter" and illegally

51.)

Confining and securing Mr. Roberts unlawful imprisonment (Strong Emphasis), see §§ 16-3-910, 16-3-920. "To amount to a seizure within the meaning of the Fourth Amendment, there must be an intentional acquisition of physical control, with the state actor restraining the freedom of a person to walk away. McCoy V. Harrison, C.A. 7 (11) 2003, 341 F.3d 600. Search, Seizure, and Arrest.

Exhibit H-1, cannot be explained as being sufficient as a "legal means" of securing Mr. Roberts "illegal detention" under the Fourth Amendment.

As a result of the violation of Mr. Roberts' right to be free from unreasonable seizures, Mr. Roberts suffered prejudice to his Sixth Amendment right to "Effective Assistance of Counsel", when counsel failed to protect his rights under the Fourth Amendment. "A court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." Strickland, 466 U.S. at 697.

As it relates to any "warrants issued as a result of any 'alleged' indictments or commitment order", Exhibit H-1 is literally the "smoking gun" that disproves the "alleged" existence of such (Emphasis). Exhibit H-1, is dated 58 days after "alleged" dates of indictments (April 12-13, 2016) (Emphasis).

Also, Exhibit H-1, can be corroborated with Exhibits E-2, Exhibit F-1, Exhibit G-1, Exhibits A-1, Exhibit B, Exhibit C and the "suppression of the impanelment documents non-existence at Mr. Roberts trial (Emphasis).

52.)

9.) Exhibit I-1, clearly demonstrates that Mr. Roberts was illegally seized on February 8, 2016 via "an unsigned warrant that is not a warrant, and is not capable of being issued within the meaning of § 17-13-140, see also, Davis, supra.

Exhibit I-1, also clearly demonstrates that although this "unfinished paper" that is [not] capable of being issued within the meaning of § 17-13-140 - it was "actually filed" by former Clerk of the State Grand Jury, James R. Parks (Emphasis), despite its illegality. Mr. Roberts submits Exhibit I-1 as direct evidence of a "collusion" between SLED, prosecutors and other state actors (i.e. Christina Bass, Frederick Samuels and James R. Parks).; and counsels failure to protect Fourth Amend. right.

10.) Exhibit J-1, (Face of Indictment 2016-GS-47-02), clearly demonstrates that 1.) No State Grand Jury convened in Berkeley County where "alleged" offenses were said to have occurred and [consummated], as Exhibit J-1 states: "At a session of the State Grand Jury of South Carolina, convened" in Columbia, South Carolina, on April 12, 2016, the State Grand Jurors present upon their oath"; 2.) In violation of Section 14-7-1550, which states: "The Foreman of the grand jury or acting foreman in the circuit courts of any county of the State may swear the witnesses [whose names shall appear on the bill of indictment in the grand jury room]", no witnesses names were present, as Court Administration's correspondence to Mr. Roberts clearly establishes that "no court reporter was assigned to record grand jury proceedings, therefore, no transcript is available" - supporting Mr. Roberts contention that grand jury's role had been usurped.

53.)

11.) Exhibit K-1, which is a correspondence from former Clerk of Berkeley County Court of General Sessions, dated 1/31/18 and filed, clearly demonstrates that when Mr. Roberts attempted to [motion] the court he was rebuffed, when the Clerk (former), Mary P. Brown, stated: "This is not a Berkeley County Case" (Emphasis); she then goes on to state: "We can't clock this due to the fact that this is a [Richland County Case]. You will need to send it to them." (Emphasis). Exhibit K-1, clearly demonstrates a "fraud upon the court" and "a fraud upon the legal rights of Mr. Roberts" as Exhibit K-1 demonstrates that there did not exist "a case" against Mr. Roberts in Berkeley County as demonstrated by the correspondence to Mr. Roberts by former Clerk, Mary P. Brown.

12.) Exhibit M, clearly demonstrates that under the Winship standard that "evidence was insufficient to sustain a conviction of 28 grams or more of heroin" when testimony offered at trial did not establish "how much actual heroin" as the statute contemplates as it relates to the "necessary elements needed to constitute the charge" (Emphasis).

13.) Exhibit N, (Lines 1-9) - clearly demonstrates from Agent Wingo's testimony that the "lab reports" he testified to regarding "how much actual heroin" - that he did not know how much heroin, only that a sample or samples contained heroin, therefore, evidence insufficient to sustain conviction for 28 grams or more of heroin.

54.)

14.) Exhibit O, (Lines 1-22), directly corroborates Exhibits M, and N - where Agent Justin Wingo gave testimony regarding lab reports concerning "what a substance may be or contain" (In violation of the Confrontation Clause of the Sixth Amend), and in his testimony failed to give "actual amounts of heroin", which [is] essential element of trafficking heroin to constitute the charge, rendering evidence insufficient to support a conviction for Trafficking 28 grams or more of heroin.

15.) Exhibit P, (Lines 7-10), clearly demonstrates that from the very testimony of Agent Justin Wingo, that Mr. Roberts was [not] involved with "out-of-state purchases" of heroin - the statute contemplates that as an "element" of trafficking heroin that Mr. Roberts would have to have "purchased or bring into this State"... heroin - By Wingo's testimony it absolves Mr. Roberts from committing the crime of "trafficking", where he (Case Agent Justin Wingo) wasn't informed nor had produced any evidence that Mr. Roberts was involved with "out-of-state purchases of heroin being brought into this State", therefore, prosecution did not meet their burden of production and persuasion on the elements to constitute the charge under the Winship standard, therefore, evidence was insufficient to sustain conviction on the charge of trafficking heroin.

55.)

16.) Exhibit Z, clearly demonstrates Mr. Roberts "Sentence Start Date as 6-9-2016" despite Mr. Roberts having been unlawfully imprisoned four (4) months prior for the same case in Alvin S. Glenn Detention Center in Columbia - the 5th judicial circuit (Emphasis). Prosecution seeks to [suppress] the fact that Mr. Roberts was first illegally detained/imprisoned from Feb. 8, 2016 to June 9, 2016 in Alvin S. Glenn Detention Center - the wrong judicial circuit. See Exhibit H-1 (Emphasis). Prosecution seeks to "erase" these 4 months because it was illegal to be taken out of the 9th judicial circuit immediately upon arrest to the 5th judicial circuit. Mr. Roberts was arrested, albeit illegally (See Exhibit I-1) in Summerville S.C. Berkeley County on Feb. 8, 2016 and taken out of the 9th judicial circuit [directly] to the 5th judicial circuit (Alvin S. Glenn Detention Center) - which was illegal and without warrant, See Exhibit I-1 (Emphasis); and illegally held in Alvin S. Glenn Detention Center in Columbia from Feb. 8, 2016 to June 9, 2016 at which point Agent Justin Wingo "carried-away" Mr. Roberts on June 9, 2016 from Alvin S. Glenn to Hill Finklea Detention Center in Berkeley County, the 9th Circuit from the 5th Circuit (See Exhibit H-1) (Emphasis). Exhibit Z, represents direct evidence of prosecutorial misconduct and a "cover-up" and collusion between prosecution and SLED Agent Justin Wingo from the very inception of this case - Exhibit H-1 and Exhibit Z clearly demonstrates the jurisdictional defects apparent in this case.

Exhibit Z, should reflect Mr. Roberts "Sentence Start Date" as Feb. 8, 2016 if this prosecution were "legal", it does not.

56.)

17.) Exhibit Z-2, being page 8 of PCR court's "Order of Dismissal", clearly demonstrates the irregular procedures pertaining to the composition of the State Grand Jury; as well as the attempt to "manufacture jurisdiction of the subject matter" by false testimony given by Assistant Attorney General, Joshua Underwood.

For example, section 14-7-1700 states in pertinent part: "... Transcripts of the recorded testimony or proceedings must be made when requested by the Attorney General or his designee. Subject to the limitations of section 14-7-1720 (A) and (D) and Rule 5, South Carolina Rules of Criminal Procedure, a copy of the transcript of the recorded testimony or proceedings requested by the Attorney General or his designee [shall be provided to the defendant by the court reporter], upon request, [at the transcript rate established by the Office of Court Administration] (Emphasis).

At the PCR hearing, Asst. Attorney General Joshua Underwood explained the State Grand Jury had a contract with Creel Reporting for transcription, which "was separate from Court Administration", and "the method for obtaining that transcript would be to go directly to the Court Reporter with Creel Reporting to obtain copies".

Underwood's assertions and testimony relating to the procedures for obtaining transcript; and the [method], along with it being [separate] from Court Administration is inconsistent and incompatible with statutory law pursuant to section 14-7-1700.

57.)

(Emphasis). Even at Mr. Roberts trial when Mr. Roberts attempts to explain to the judge that he had corresponded with Court Reporter Manager, Desiree Allen in his efforts of trying to obtain the state grand jury impanelment documents, trial judge stated: "Desiree Allen, she's [in charge of the court reporters]. You have the responsibility to write the actual court reporter that did it" (Tr. July 28, 2017, Page 16, lines 4-9).

Defendant, then explained that he had wrote South Carolina Court Administration (Tr. Page 16, lines 13-16); trial judge then stated: "They are not going to do that for you. That's not their responsibility. [All they do is the scheduling]" (Tr. Page 16, lines 18-19). Defendant states: "I thought everything goes through the South Carolina Court Administration" (Tr. Page 16, lines 20-21), trial judge then responded: "Only the scheduling". They don't have any responsibility to do anything else. Each court reporter is responsible for their own records. "They supervise court reporters," but they don't produce transcripts (Tr. Page 16, lines 22-25). When Mr. Roberts inquired to the judge "who he would of have to had written to obtain court reporter's name and address", when he stated: "I understand, but who would you write for that?" (Tr. Page 17, lines 14-15), trial judge answered: "You would have to know the name of the court reporter. And if you ask [Court Administration] (Emphasis), [they will give you that... (Tr. Page 17, lines 14-18). So contrary to Underwoods testimony, which is [not] credible and inconsistent with statutory law, the State Grand Jury "impanelment documents" do not "legally exist."

58.)

18. Exhibit P-2, is a correspondence from the Staff Attorney of South Carolina Court Administration, to co-defendant Justin G. Hunter, dated September 17, 2018, which [confirms] that the State Grand Jury [did not] convene on date's of Mr. Roberts and Mr. Hunter's indictments (April 12, 2016) (Emphasis); Exhibit P-2, states in pertinent part:

"Dear Mr. Hunter: This is in response to your letter that we received on September 6, 2018, requesting information so that you might contact the Court Reporter who covered the April 12-13, 2016, meeting of the State Grand Jury. Please [note] that our records "do not" show that the State Grand Jury met that week." (Emphasis); this is exculpatory evidence coming directly from the South Carolina Supreme Court, therefore, Mr. Roberts claims and contentions are very real and not imagine [And] supported by this very Court.

59.)

* Point 12 *

Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State... when Mr. Roberts was held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed, in violation of S.C. Const. Art. 1. § 11.

Mr. Roberts contends that 1.) The jurisdiction of a grand jury is coextensive with the criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry Code 1962, § 43-232; Const. Art. 1. § 11; 2.) There was [no] grand jury impaneled for which to make inquiry where the alleged crime has been committed (Berkeley County); 3.) No act material and essential to the offenses alleged and requisite to its consummation occurred in Richland County (Emphasis).

When Mr. Roberts was [seized] on February 8, 2016, in Berkeley County and "carried-away" to Richland County to be held to answer for crimes purportedly to have occurred in Berkeley County, it violated due process of law pursuant to the Fourteenth Amendment, and "Notice"; as well as his Sixth Amendment right to be informed of the nature and cause of the accusation against him. Therefore, Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State.

60.)

* Point 13 *

Mr. Roberts conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State... when in violation of S.C. Const. Art. V. § 22, the state grand jury [did not] consist of eighteen members, twelve of whom must agree in a matter before it can be submitted to the court, as evidenced by the facts that: 1.) Former Court Reporter Manager, Desiree Allen of South Carolina Court Administration, in a correspondence to Mr. Roberts dated 11-6-17, informed him that "no court reporter had been assigned to record grand jury proceeding, therefore, no "legal transcript" is available; 2.) Contrary to section 14-7-1550, there were no witnesses whose name should have appeared on the Bill of indictment; 3.) And the "suppression" of the "alleged" impanelment documents at Mr. Roberts trial; 4.) Also, all evidence in the form of exhibits presented as evidence in this petition that a reasonable juror could conclude after viewing that the state grand jury's independent role had been usurped by prosecutorial misconduct.

The State Grand Jury was not duly sworn, duly organized and took no action upon the indictment in the regular and usual manner as the state grand jury "did not exist as a body" on date's of indictment and corroborating exhibits as well as State actors and prosecutors conduct that demonstrated a "collusion" is rooted rooted in the record and apparent by procedural irregularities.

61.)

* Relief Sought *

Petitioner request relief in the form of the following :

- 1.) Dismissal of the case for "a want of jurisdiction of the subject matter" and due process violations?;
- 2.) Dismissal of the indictment with prejudice for the suppression of exculpatory evidence "that involves a question of prosecutorial misconduct?;
- 3.) Absolute Release for massive violations of due process of law?;
- 4.) Dismissal of Trafficking Offenses for insufficiency of evidence?;
- 5.) Suppression of all evidence based on the illegal arrest and seizure?;
- 6.) A New Trial;
- 7.) For the Court to declare Mr. Roberts conviction a nullity?;
- 8.) For the Court to declare a "fraud upon the court" and a "fraud upon the legal rights of Mr. Roberts" occurred "where an Attorney (trial judge) embarks on a scheme to either suborn perjury or intentionally conceal documents, extrinsic fraud constituting fraud upon the court occurs?;
- 9.) For the Court to hold Mr. Roberts conviction or sentence to be [void] because of "the violation of a substantive rule of law" (i.e. Brady rule);
- 10.) And whatever relief that may be deemed just and appropriate under the circumstances?

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

DATE: March 16, 2026

APPEAL FROM BERKELEY COUNTY
COURT OF COMMON PLEAS

RECEIVED

MAR 20 2026

JUDGE R. Kirk Griffin, Circuit Court Judge S.C. SUPREME COURT

CASE NO.

2020-CP-08-01349

Appellant NO.

2024-001521

RECEIVED

JUL 02 2026

STATE OF SOUTH CAROLINA, RESPONDENT

S.C. SUPREME COURT

V.

Mr. Emory W. Roberts Jr., APPELLANT

(NAME OF DOCUMENT)

Addendum/Supplement To Appeal

DATE OF ORDER

February 10, 2026

Counsel for Appellant Certifies that the Rulings on
his Rule 59(e); Rule 60 B, were made on the above date,
February 10, 2026

Mr. Emory W. Roberts Jr. 373 393

Attorney for Appellant Pro se.,

Request Appeal Be Taken Out Of Abeyance,
And Addendum/Supplement To Appeal Added,
And Declaratory Judgment dated 1-7-2025 to be
Issued/Declared And Taken Out Abeyance

Enclosure: Marked Exhibits A and J

: Declaratory Judgment
Pleading dated 1-7-2025

: Affidavit dated Dec. 30, 2025
made by Justin Hunter (Co-defendant)

Clerk OF Court: Please Clock, Date,
Stamp, File, And Return Copy,
Thanking You In Advance.

* STATEMENT OF THE CASE *

On April 12-13, 2016, Assistant Attorney Generals Joshua Underwood and David Fernand willfully entered into an agreement with James R. Parks (Former Clerk of State Grand Jury) for the false and illegal return of Indictment # 2016-05-47-02 (See Exhibits A and J).

Mr. Roberts proceeded to trial on July 24-28, 2017, and was convicted. This conviction was obtained or procured by Fraud upon the Court, perjury, rubber-stamped indictments, and a collusion between the trial judge, prosecutors and Mr. Roberts Attorney. At trial "ineffective assistance of counsel", "a partial judge", and the collusion with States Attorney's infringed Mr. Roberts rights under Federal Constitution, and State Constitution.

Enclosed are Exhibits A and J - which indisputably demonstrates that the independent role of the State Grand Jury - its integrity, had been usurped by prosecutorial misconduct resulting in extrinsic fraud, suppression of exculpatory evidence, and massive due process violations. The exculpatory evidence has its source from this very Court - South Carolina Supreme Court, therefore, Mr. Roberts claims and contentions are very real and not imagined. At trial, trial judge was improperly influenced to partake in a Fraud upon the Court, and Fraud upon the legal rights of Mr. Roberts. Judge Jefferson violated Mr. Roberts due process right to have a "impartial adjudicator" assigned to his case [without] the desire to influence the outcome of the proceedings, resulting in [Structural Error] - as the [adversarial process] did not exist as a result of her erroneous rulings made to "conceal documents during the course of a litigation" (or lack of as the S.G.J. impanelment documents do not legally exist). Mr. Roberts was infringed his right to "effective assistance of counsel"; his right to an impartial finder of fact; his Sixth Amendment right to make and present a defense; his 14th Amend. right to "mount or prepare a defense"; his 14th Amend. right to "Notice"; his Sixth Amend. right to be informed of nature and cause of accusation against him; his rights under South Carolina State Constitution, pursuant to Art. I, § 3, Art. I, § 11, and Art. V, § 22. Mr. Roberts was also infringed his Sixth Amendment right to Confrontation. Mr. Roberts contends that because trial counsel abandon Mr. Roberts 6th Amend. right to effective counsel that there was [no] adversarial process - resulting in [Structural Error] - as there was [no] adequate defense put forward. Mr. Roberts contends that prosecutors suppressed exculpatory evidence in violation of Brady, and infringed Mr. Roberts Sixth Amendment to a fair trial, this is rooted in the record and observed by the contents of Exhibits A and J (Enclosed).

Exhibit A, states: "You are requesting a transcript from State Grand Jury proceedings. This is to advise that there is [no] court reporter assigned to record Grand Jury proceedings, and therefore, there is no transcript available" (Emphasis).

Exhibit J, states: "This is in response to your letter (Co-defendant Justin Hunter) that we received on September 6, 2018, requesting information so that you may contact the Court Reporter who covered the April 12-13, 2016, meeting of the State Grand Jury. Please [note] that our [records] do not show that the State Grand Jury met that week." Accordingly, trial judge lacked the jurisdiction to convict on the matter. There exist a want of jurisdiction in the trial Court - Judge Jefferson exceeded her sentencing authority on July 28, 2017. As the PCR Court has ruled on February 10, 2026 - Mr. Roberts submits this addendum/supplement to his Appeal held in Abeyance and ask that Appeal and Declaratory Judgment dated 1-7-2025 be also taken out of Abeyance so that Court may Declare rights and legal relations.

* STATEMENT OF THE CASE *

On April 12-13, 2016, Assistant Attorney Generals Joshua Underwood and David Fernandez willfully entered into an agreement with James R. Parks (Former Clerk of State Grand Jury) for the false and illegal return of Indictment # 2016-05-47-02 (See Exhibits A and J).

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* Questions Presented To The Court *

1.) Did the Court of Common Pleas err in holding ^{that}.... Mr. Roberts "was not" denied due process of law under Art. I. § 3 pursuant to State Constitution and the Fourteenth Amendment to the United States Constitution, when under the Standard of Brady V. Maryland, 373 U.S. 83 (1963); and Evans V. State, 363 S.C. 495, 611 S.E. 2d 510 (2005), trial judge erroneously denied discovery in a criminal case and infringed his 14th Amend. right to "mount or prepare a defense"? (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7).

2.) Did the Court of Common Pleas err in hold^{ing} that.... Mr. Roberts "was not" denied due process of law, under the Standard of Faretta V. California, 422 U.S. 806, 840 (1974), when trial judge infringed his Fundamental right to present or make a defense? (Tr. Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7).

3.) Did the Court of Common Pleas err in holding that.... Mr. Roberts "was not" denied due process of law when trial judge infringed Mr. Roberts right under State Constitution pursuant to Art. I. § 11, and Art. V. § 22, to challenge whether he had been indicted by a legally constituted and established grand jury? (Tr. Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7).

4.) Did the Court of Common Pleas err in holding that.... Mr. Roberts "was not" denied due process of law when trial judges erroneous rulings prevented him from "preparation of a defense" and from "ensuring protection of his due process rights pursuant to §§ 14-7-1700, 14-7-1720(A) and (D), 14-7-1770?

5.) Did the Court of Common Pleas err in holding that.... Mr. Roberts "was not" denied due process of law, when "subornation of perjury by an Attorney (Joshua Underwood, David Fernandez) and/or the intentional concealment of documents by an Attorney (Judge Jefferson) constituted extrinsic fraud because they defeat the opposing party's opportunity to litigate the matter? (Tr. Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7).

6.) Did the Court of Common Pleas err in holding that.... Mr. Roberts "was not" denied his fundamental right to a fair trial under the Sixth Amendment and due process of law under the 14th Amend. by the erroneous rulings by trial judge denying the right to "mount or prepare a defense"? (Tr. Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7) (Emphasis).

- 7.) Did the Court of Common Pleas err in holding that.... Mr. Roberts "defense" was not prejudiced, under the Standard of Hunt V. Mitchell, 261 F.3d 575, 583 (6th Cir. 2001), when he was not afforded discovery before voir dire? (Tr. Page 15, lines 5-9).
- 8.) Did the Court of Common Pleas err in holding that.... Mr. Roberts "was not" denied due process of law, when "restriction of defense discovery not only undermine the search for truth, which is thought to be enhanced by liberal discovery, but would also harbor constitutional defects like those of preclusion to the extent that the defendant has a [constitutional right to pretrial discovery]? (Tr. Page 15, lines 5-9; Page 19; lines 8-16)
- 9.) Did the Court of Common Pleas err in holding that.... "Fusing of prosecutorial and Judicial functions" "did not" infringe on constitutional rights to 1.) a fair trial; 2.) Preparation of a defense; and 3.) Right to an impartial adjudicator?
- 10.) Did the Court of Common Pleas err in holding that.... Denial of the right to an impartial adjudicator "did not" constitute a structural error where prejudice is presumed
- 11.) Did the Court of Common Pleas err in holding that.... Under the Standard held in United States V. Baldi, 195 F.2d 815 (C.A. 3), cert. denied 345 U.S. 104, reh. denied 345 U.S. 946, Mr. Roberts "was not" denied due process of law, when the State Grand Jury "impanelment documents" (or rather, lack of) was suppressed by the trial judge and prosecutors to [conceal] their non-existence (See Exhibits A and J)?
- 12.) Did the Court of Common ^{E.R.} ~~Plea~~ Pleas err in holding that.... Trial counsel's performance "did not" fall below an objective standard of reasonableness - and prejudice to Mr. Roberts defense, when counsel failed to [assist] defendant in his attempts to gain access to the State Grand Jury "impanelment documents" (or lack of) and was erroneously denied by the trial judge?
- 13.) Did the Court of Common Pleas err in holding that.... Trial counsel's "function" in representing a criminal defendant is [not] to [assist] defendant and hence, "does not," owe client a duty of loyalty, and "does not" have a duty to avoid conflicts of interest... regarding substantial right to "mount or prepare a defense," and his procedural rights pursuant to §§ 14-7-1720(A) and (D) and Rule 5, SCRCP, 14-7-1770 (C); and Evans V. State, (S.C. 2005) 363 S.C. 495, 611 S.E. 2d 510?
- 14.) Did the Court of Common Pleas err in holding that.... Trial Counsel "was not" ineffective assistance of counsel causing prejudice to his defense, when under the Standard of U.S. V. Williamson, 183 F.3d, 458, 463-64 (5th Cir. 1999), counsel failed to object and cite controlling precedent (Brady V. Maryland) in regards to the denial of discovery by the trial judge? (Tr. Page 15, lines 5-9; Page 19, lines 8-16).

15.) Did the Court of Common Pleas err holding that.... Trial counsel "was not" ineffective assistance of counsel causing prejudice to his defense, under the Standard of U.S. V. Williamson, 183 F.3d, 458, 463-64 (5th Cir. 1999), when counsel failed to object and cite the controlling precedent (Evans V. State) (S.C. 2005) 363 S.C. 495, 611 S.E. 2d 510, regarding obtaining "impanelment documents" (or rather lack of)? (See Exhibits A and J).

16.) Did the Court of Common Pleas err in holding that.... Trial counsel's function "was not" [an assistant to defendant] and "did not" derive the overarching duty to [advocate defendant's cause].... in obtaining the State Grand Jury "impanelment documents" (or lack of) under the Standard of Strickland V. Washington?

17.) Did the Court of Common Pleas err in holding.... Trial counsel "was not" ineffective assistance of counsel, under the Standard of Williams, 529 U.S. 393, when "ineffective assistance of counsel" did deprive defendant of a substantive (right to mount or prepare a defense) or procedural right (§§ 14-7-1720(A) and (D) and Rule 5, SCRCP), to which the law entitles him?

8.) Did the Court of Common Pleas err in holding that.... Trial Counsel "was not" ineffective assistance of counsel, under the Standard of U.S. V. Williamson, 183 F.3d, 458, 463-64 (5th Cir. 1999), when trial counsel failed to object and cite the controlling precedent (Crawford V. Washington) regarding Mr. Roberts right to Confrontation under the Sixth Amendment when Agent Justin Wingo violated that right, when he testified to "testimonial hearsay" lab reports "to prove the truth of the matter asserted"?

19.) Did the Court of Common Pleas err in holding that.... Trial Counsel "was not" ineffective assistance of counsel, under the Standard of U.S. V. Williamson, 183 F.3d 458, 463-64 (5th Cir. 1999), when trial counsel failed to object and cite controlling precedent (Crawford) regarding Mr. Roberts right to Confrontation that was violated when Misael Vasquez testified to testimonial hearsay lab reports "to prove the truth of the matter asserted"?

20.) Did the Court of Common Pleas err in holding.... Trial counsel "was not" ineffective assistance of counsel when counsel failed to [advocate] and protect Mr. Roberts rights under the State Constitution pursuant to Art. I, § 11, and Art. V, § 22, under the Standard of Strickland V. Washington; and as a persuasive authority, U.S. V. Williamson, 183 F.3d, 458, 463-64 (5th Cir. 1999) and Williams, 529 US 393?

21.) Did the Common Pleas Court err in holding that.... Trial counsel "was not" "ineffective assistance of counsel", when "defense" counsel, without consent or colloquy under the Standard of State V. Orr, 304 S.C. 185, 403 S.E. 2d 623 (1991), waived challenge to Chain of Custody, thereby effectively infringing Mr. Roberts procedural right to Confront witnesses against him, under the Standard of Williams, 529 US 393, where ineffective assistance of counsel "did deprive defendant of a substantive (Sixth Amend. right to Confrontation) or procedural right (Rule 6, SCR Crim.P.) to which the law entitles him?"

22.) Did the Court of Common Pleas err in holding that.... Prosecution "did not" deny due process of law to Mr. Roberts, under the Standard of Brady v. Maryland, when prosecutors repeatedly suppressed exculpatory evidence in the form of the State Grand Jury "impanelment documents" (which do not legally exist) (See Exhibits A and J)?

23.) Did the Court of Common Pleas err in holding that.... Prosecution "did not" "infringe" Mr. Roberts substantive right to "mount or prepare a defense", and also "did not" violate his procedural due process of law pursuant to §§ 14-7-1700, 14-7-1720(A) and (D) and Rule 5, SCRCP, under the Standard of United States v. Baldi, 195 F.2d 815 (C.A.3) cert. denied 345 U.S. 104, reh. denied 345 U.S. 946?

24.) Did the Court of Common Pleas err in holding that.... Prosecution "did not" violate due process of law of law owed to Mr. Roberts when prosecution failed to accede to Mr. Roberts request for Discovery in the form of the State Grand Jury "impanelment documents" (or rather, lack of)? (See Exhibits A and J)

25.) Did the Court of Common Pleas err in holding that.... The withheld evidence "impanelment documents, or rather lack of" was not "[critical]" to defendant's [ability] to "present a complete defense" under the Standard of United States v. Agurs, 427 U.S. 97, 112 (1976)?

26.) Did the Court of Common Pleas err in holding that.... When the government withholds material, exculpatory evidence - whether knowingly or inadvertently - it "does not" deny the defendant a fair trial?

27.) Did the Court of Common Pleas err in holding that.... The withholding of exculpatory evidence "does not" impair the preparation or presentation of the defense case? (See Exhibits A and J)

28.) Did the Court of Common Pleas err in holding that.... Under the Standard of Montgomery V. Louisiana, Supreme Court of the United States - Jan. 25, 2016, 577 U.S. 190 "A conviction or sentence imposed in violation of a substantive rule of constitutional law (Brady V. Maryland - Brady Rule) is not just erroneous but contrary to law and, as a result, void and it follows, as a general principle, that a court has the authority to... [leave in] place a conviction or sentence that violates a substantive rule?

29.) Did the Court of Common Pleas err in holding that.... Preparation of a defense is a factor that goes to the very heart - the integrity of the [adversarial process], and on this principle, Mr. Roberts alleged structural error, in that.... 1.) the suppression of exculpatory evidence prevents the presentation of a complete defense; 2.) trial judges erroneous rulings infringed Mr. Roberts due process of law to "mount or prepare a defense" - [did not] directly affect the very framework of the [adversarial process]?

30.) Did the Court of Common Pleas err in holding that.... Trial counsel's errors "did not" contaminate the trial and manifest a "breakdown" in the "adversarial process" rendering defendants trial fundamentally unfair when trial counsel: 1.) stipulated to the Chain of Custody (Tr. Page 74, lines 4-25; Page 75, lines 1-7), without dissent or colloquy, relieving prosecutors burden of proof, and infringing his Sixth Amend. right to Confrontation, as well as his procedural right pursuant to Rule 6, S.C.R.Crim.P.; 2.) failing to advocate defendant's cause in obtaining impanelment documents (or lack of); 3.) failing to object and cite controlling precedent regarding his substantive right to "mount or prepare a defense" and his procedural rights pursuant to §§ 14-7-1700, 14-7-1720 (a) and (b) and Rule 5, S.C.R.C.P.; 4.) failed to advocate and protect under State Constitution pursuant to Art. 1, § 3, Art. 1, § 11, and Art. V, § 22; 5.) failed to protect his Sixth Amendment right to a fair trial and due process of law; and 6.) counsel failed to protect his right to "Notice" and his Sixth Amendment right to be informed of the nature and cause of accusation"....?

31.) Did the Court of Common Pleas err in holding that.... Fraud upon the Court "was not" shown or demonstrated when Judge Jefferson acted with an [intent] to [defraud] when at trial, before the swearing of the jury, Mr. Roberts moved for the production of the State Grand Jury impanelment documents (or lack of) (Tr. Page 15, lines 5-6) and Judge Jefferson stated/ruled: "You [don't] get those, sir. [In] South Carolina, [All] Grand Jury proceedings are [secret]. [Nobody] gets those (Emphasis) (Tr. Page 15, lines 7-9)?

32.) Did the Court of Common Pleas err in holding that.... The judicial impartiality "was not" polluted by erroneous rulings by the trial judge denying discovery in a criminal case - in the form of the State Grand Jury impanelment documents (or rather lack of) in order to intentionally aid and abet and to suppress or conceal exculpatory evidence in a collusion with the State to manufacture and obtain a fraudulent conviction procured by a fraud upon the court, causing a legal perversion?

33.) Did the Court of Common Pleas err in holding that.... Joshua Underwood's "improper influence, fraudulent scheme, considered unconscionable," did not "defraud the judicial machinery, such that the court ^{could} not perform its function as a neutral arbiter of justice?" (Tr. Page 15, lines 5-9; Page 19, lines 8-16; Page 85, lines 5-7).

34.) Did the Court of Common Pleas err in holding that.... Fraud upon the Court did not "occur when an officer of the court - such as a prosecuting Attorney (Joshua Underwood) - engaged in misconduct that corrupted the judicial process itself (See Exhibits A and J), preventing a full and fair presentation of the case?"

* Conclusion *

Due to massive violation of Due Process of Law; Suppression of Exculpatory Evidence; Violation of Fundamental rights, substantial rights; Extrinsic Fraud Upon the Court; Structural Error; Prosecutorial Misconduct shocking to the Universal sense of justice; and want of subject-matter jurisdiction, Mr. Roberts asks that Indictment # 2016-GS-47-02 be dismissed with prejudice, as Judge Jefferson lacked subject matter jurisdiction to convict Mr. Roberts suffer prejudice to his Sixth Amendment right to a fair trial.

* Violation Of Due Process of Law Pursuant To The Fourteenth Amendment Right To Mount Or Prepare A Defense; And Violation of The Sixth Amendment Right To A Fair Trial; As Well As The Violations of South Carolina State Constitution Pursuant To Art. I. § 3; Art. I. § 11; Art. V. § 22.*; Ineffective Assistance of Counsel

Defendants are entitled to discovery in criminal cases, pursuant to the constitution, statute, and rule. See., Brady v. Maryland, 373 U.S. 83 (1963); Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005); S.C. Code Ann. § 14-7-1700; Rule 5 SCR Crim. P.

Despite the constitution, statutory law, and Rule - Judge Jefferson violated Mr. Roberts Due Process of Law and infringe his right to "mount or prepare a defense"; his fundamental right to present or make a defense; his Sixth Amendment right to a fair trial; his Due Process of Law right to "an impartial finder of fact without the desire to influence the outcome of the proceedings"; his rights under the State Constitution pursuant to Art. I. § 11 and Art. V. § 22; his due process pursuant to State Constitution pursuant to Art. I. § 3. For example: At Mr. Roberts trial, before the swearing of the jury, Mr. Roberts moved for the production of the State Grand Jury impanelments documents, as it was [incumbent] upon him to do so "being entitled" by law to view them in order to prepare a defense and ensure [protection] of his due process rights pursuant to U.S.C.A. Const. Amend. 14; Code 1976, §§ 14-7-1700, 14-7-1720, 14-7-1770, Rules Crim. Proc. Rule 5; Mr. Roberts states: "I would also like the State Grand Jury minutes" (Tr. July 24-28, 2017, Page 15, lines 5-9), to this, the trial judge ruled: "You don't get those, sir. In South Carolina, all Grand Jury proceedings are secret. [Nobody] gets those." Next, trial judge states: "I guess I'm trying to figure out what is it that you think you would be able to use from the State Grand Jury record?" (Tr. Page 19, lines 8-10), to this Mr. Roberts states: "Well, I'm actually going to show that no State Grand Jury even occurred" (Tr. Page 19, lines 11-12) (Emphasis) (See Exhibits A and J); Next, Mr. Roberts states: Article 1, Section 11, states "no person may be held the jurisdiction over which is not apart of the magistrate's court, unless on presentment or indictment..." (Tr. Page 73, lines 3-6), to this trial judge states: "Sir, we have special legislation that's been passed that deals with the State Grand Jury. Everything they did to you was permissible" (Tr. Page 73, lines 7-9); and again, Mr. Roberts states: "I asked to challenge the jurisdiction of the State Grand Jury. Nothing" (Tr. Page 85, lines 5-6), to this, trial judge states: "You have no basis to challenge it" (Tr. Page 85, line 7) (Emphasis).

The repeated denials of "discovery" in a criminal prosecution violated the components of Due Process of Law and Mr. Roberts rights under State Constitution pursuant to Art. I. § 3, Art. I. § 11, Art. V. § 22 - as well as Mr. Roberts Sixth Amend. right to a fair trial, and his Federally protected right to "mount or prepare a defense"; and his right to an "impartial finder of fact" without the desire to influence the outcome of the proceeding, resulting in Structural Error and massive procedural due process violation where the Court should find that the defendant was denied his Federally protected right to a fair trial pursuant to the Sixth Amendment to the United States Constitution and Art. I. § 3 of the State Constitution.

South Carolina Statutory Law provides :

- 1 : A defendant is allowed to obtain and use the impanelment documents in preparing a defense and ensuring protection of his due process rights. EVANS V. STATE (S.C. 2005) 363 S.C. 495, 611 S.E. 2d 510 ;
- 2 : Removing veil of secrecy after a defendant has been indicted was consistent with legislative intent expressed in statute. EVANS V. STATE (S.C. 2005) 363 S.C. 495, 611 S.E. 2d 510 ; Code 1976 § 14-7-1770, SC ST § 14-7-1770 ;
- 3 : Subject to the limitations of Section 14-7-1720(A) and (D) and Rule 5, South Carolina Rules of Criminal Procedure, a defendant has the right to review and to reproduce the stenographically or electronically recorded materials ;
- 4 : Section 14-7-1770(c) "A defendant has the right to review the documents to determine whether to timely challenge the legality of the State Grand Jury which indicted him"
- 5 : Due Process requires that in a criminal prosecution, government must disclose to defendant evidence favorable to him if suppression of that evidence would deny him a fair trial. U.S. Const. Amend. 14 ;

Contrary to the above statutory law and defendants rights to obtain the "alleged" state grand jury impanelment documents - the State failed to accede to defense (Mr. Roberts) request for disclosure of some specific kind of exculpatory evidence. For example, when the trial judge stated : "I guess I'm trying to figure out what is it that you think you would be able to use from the State Grand Jury record ?" (Tr. July 24-28, 2017, Page 19, lines 8-10) ; Mr. Roberts replied : "Well, I'm actually going to show that no State Grand Jury even occurred" (Emphasis) Tr. Page 19, lines 11-12) - that is the kind of exculpatory evidence Mr. Roberts was trying to reveal - Exhibits A and J demonstrates plain and very clear that the State Grand Jury's independent role was usurped by prosecutorial misconduct, this is indisputable and the very reason for trial judge's erroneous rulings denying access to "impanelment documents" because she had direct knowledge that the "documents" did not exist and entered into a collusion with the State to obtain a fraudulent conviction (Emphasis).

Without question, Mr. Roberts' desire to view the "documents" related to the grand jury proceedings was well-founded in the law. See, Evans V. State, 363 S.C. 495, 509-514, 611 S.E. 2d 510, 518-520 (2005) (explaining a multitude of ways a criminal defendant may challenge an indictment based upon the state grand jury's proceedings and the "documents" to which a defendant [is] entitled during the discovery phase regarding the State Grand Jury's proceedings). A defendant has a constitutional [right] to demand that a grand jury which is properly established and constituted under the law consider the criminal allegations against him. See S.C. Const. Art. I. § 11 and Art. V. § 22 "[O]ne who demands and is refused the right to be tried for crime charged against him only upon an indictment presented by a legal grand jury, in instances where such indictment is required, may thereafter justly take the position that he has been deprived of life, liberty or property without due process of law in violation of the State Constitution. An indictment or 'notice document' issued by a grand jury which is established or constituted illegally is deemed a nullity. An indictment which is a nullity would be insufficient, as a matter of law, to give the required notice to a defendant. In such cases, a defendant's challenge 'does not assert a disqualification which affects only a member of a body otherwise lawful, nor a mere irregularity in doing [that] which the law requires, which assumes a power to act; but it goes to the existence of the grand jury as a body, that it is void as such (see Exhibit J), and that its indictment is therefore a nullity. State V. Edwards, 68 S.C. 318, 322, 47 S.E. 395, 396 (1904) (where legislative act under which grand jury was created and impaneled was later declared unconstitutional, grand jury was an illegal body and thus murder indictment issued was a nullity and incurable); See also, State V. Sanders, 251 S.C. 431, 438, 163 S.E. 2d 220, 224 (1968). In sum, a defendant is entitled to review impanelment documents in order to determine, by a timely motion to quash an indictment made before the jury renders its verdict, whether the state grand jury which indicted him was legally established or suffered from any lesser irregularity [which implicates the defendant's constitutional right to have his case considered by a grand jury which is properly constituted under the law. (Strong Emphasis)].

In the instant case here, Mr. Roberts' Federally protected right to Due Process of Law to "mount or prepare a defense," as well as his due process pursuant to Art. I. § 3 and Art. I. § 11; and Art. V. § 22 were infringed repeatedly (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7), in order to shield an unfounded prosecution. Mr. Roberts contends that his fundamental right to present a defense - the right to present the defendant's version of the facts to the sentencing jury, is a fundamental element of due process of law. U.S.C.A. Const. Amend. 14. Mr. Roberts also contends that the infringement of the right to "mount or prepare a defense is a [Structural Error] that, without doubt, calls into question the 'structural integrity of the tribunal,' and the infringement of Mr. Roberts' Sixth Amendment right to a fair trial (Emphasis).

To establish ineffective assistance of counsel, the defendant must prove: 1.) that counsel's performance fell below an objective standard of reasonableness, 466 U.S., at 688, 104 S.Ct. 2052; and that the deficient performance prejudice the defense, which requires a showing that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.*, at 694, 104 S.Ct. 2052.

Counsel's performance fell below an objective standard of reasonableness - when counsel failed [to assist] defendant in his attempts to gain access to the State Grand Jury "impanelment documents and was erroneously denied by the trial judge (Tr. July 24-28, 2017, Page 15, lines 5-9). Defense Counsel failed to object and cite controlling precedent (Evans v. State (S.C. 2005) 363 S.C. 495, 611 S.E.2d 510); Section 14-7-1720(A) and (D) and Rule 5, South Carolina Rules of Criminal Procedure; and Section 14-7-1770(C). And again, defendant moved for the production of the State Grand Jury impanelment documents, when he stated: "I asked to challenge the jurisdiction of the State Grand Jury. Nothing" (Tr. Page 85, lines 5-6), trial judge ruled: "You have no basis to challenge it" (Tr. Page 85, line 7); Defense counsel absolutely fails to object and cite controlling precedent (Brady v. Maryland, 373 U.S. 83 (1963)); At one point, Mr. Roberts states: "Article I, Section 11, states no person may be held the jurisdiction over which is not a part of the magistrate's court, unless on a presentment or indictment" (Tr. Page 73, lines 3-6), again, trial counsel refuses to advocate the defendant's cause when counsel fails to object and cite controlling precedent (Art. I, § 11, Art. V, § 22). When the trial judge states: "I guess I'm trying to figure out what is it that you think you would be able to use from the State Grand Jury record?" (Tr. Page 19, lines 8-10); to this, defendant responds: "Well, I'm actually going to show that no state grand jury even occurred" (Tr. Page 19, lines 11-12) (Emphasis). Trial judge consistently denied discovery of the State Grand Jury impanelment documents (which do not legally exist), and not once had trial counsel objected and cited defendant's right to "mount or prepare a defense" or his "procedural right pursuant to § 14-7-1720(A) and (D) and Rule 5, SCRPC; and Brady v. Maryland. Ineffective Assistance of Counsel did [deprive] defendant of a substantive or procedural right to which the law entitles him. See., Williams, 529 U.S. at 393; See also., U.S. v. Williamson, 183 F.3d 458, 463-64 (5th Cir. 1999) (counsel's failure to cite directly controlling precedent was ineffective assistance of counsel because it was objectively unreasonable and resulted in prejudice to defendant). Counsel's deficient performance rendered the result of the trial unreliable and the proceeding fundamentally unfair. 466 U.S., at 687, 104 S.Ct. 2052. From counsel's function as assistant to defendant derive the overarching duty to [advocate] defendant's cause - trial counsel did not and as a result prejudiced the defense and Mr. Roberts 6th Amend. right to "effective counsel."

* BRADY VIOLATION *

In Brady v. Maryland, the Supreme Court held that due process, pursuant to the 14th Amend., requires the prosecution to disclose evidence favorable to an accused upon request (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7), when such evidence is material to guilt or punishment (see Exhibits A and J) (Enclosed). "The Brady disclosure rule requires the prosecution to provide the defendant with any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment." State v. Simpson, Court of Appeals of South Carolina, Jan. 23, 2019 425 S.C. 522. Compliance with Brady evidence disclosure requirements is a [constitutional] requirement; the Brady disclosure rule is grounded in the defendant's [fundamental] right to a [fair trial] "mandated by the Due Process Clause" of the Fifth and Fourteenth Amendments. U.S.C.A. Const. Amends. 5.14. State v. Proctor, 348 S.C. 322, 559 S.E. 2d 318 (Ct. App. 2001). "Exculpatory evidence is evidence the suppression of which would undermine confidence in the verdict." U.S. v. Ruiz, 536 U.S. 622, 628 (2002) (quoting Giglio v. U.S., 405 U.S. 150, 154 (1972)). Evidence is exculpatory and "favorable," for purpose of determining whether its suppression by prosecution violates Brady, if it may make the difference between conviction and acquittal had it been disclosed and used effectively. U.S. v. Bartko - U.S.C.A., Fourth Circuit. "Brady applies to both impeachment and exculpatory evidence." State v. Durant, Supreme Court of South Carolina, May 6, 2020 430 S.C. 98. U.S. v. Bagley, 473 U.S. 667, 676-77 (1985) (impeachment evidence, as well as exculpatory evidence, is subject to Brady disclosure). In United States v. Bagley, the Court held that evidence is material if there is a reasonable probability that disclosure of the evidence would have changed the outcome of the proceeding. See, Bagley, 473 U.S. at 678, 682; see also, Syles v. Whitley, 514 U.S. 419, 434 U.S. (1995) (defendant must show that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict).

Accordingly, Exhibits "A" and "J" clearly establishes the usurpation of the State Grand Jury's independent role as a result of prosecutorial misconduct. Exhibit A is direct evidence from South Carolina Supreme Court, Court Administration, that informed Mr. Roberts that "no court reporter was assigned to record grand jury proceedings, therefore, there is [no] transcript available" - for the date of Mr. Roberts indictments; this is contrary to statutory law pursuant to §14-7-1700. Exhibit J is direct evidence from South Carolina Supreme Court, Court Administration, who informed Mr. Justin Hunter, who's a codefendant listed on the same indictment (2016-GS-47-02), that "their record doesn't show that the State Grand Jury met the week of Mr. Roberts and Mr. Hunter's date of indictments," stated in pertinent part: "This is in response to your letter that we received on September 6, 2018, requesting information so that you might contact the Court Reporter who

covered the April 12-13, 2016, meeting of the State Grand Jury. Please note that our records do not show that the State Grand Jury met that week"... (See Exhibit J) (Emphasis). Exhibit J corroborates Exhibit A, and it is Mr. Roberts' contention that these "exhibits" demonstrate why the "State Grand Jury impanelment documents" (or rather lack of as they don't legally exist) was suppressed by the prosecution at trial of defendant. Prosecution failed to accede to Mr. Roberts' request for the "alleged" documents because there were "no documents" and the Prosecution suppressed exculpatory evidence/information that there was no convening of the State Grand Jury on dates of indictments as evidenced by Exhibits A and J (Emphasis). Brady disclosures are fundamental to a Criminal Trial's truth-seeking function and to prevent wrongful convictions. Brady seeks to ensure that criminal trials are just and the resulting verdicts worthy of confidence. United States v. Bagley, 473 U.S. 667, 675, 682 (1985); United States v. Agurs, 427 U.S. 97, 112 (1976) [With held evidence is critical to defendant's ability] to "present a complete defense." Holmes v. South Carolina, 547 U.S. 319, 324 (2006). The overarching purpose of Brady is "to ensure that a miscarriage of justice does not occur." Bagley, 473 U.S. at 675. Our adversarial system of criminal justice depends on the effective functioning of the Brady doctrine. Strict compliance with Brady's disclosure rule helps mitigate the unavoidable information imbalance between government investigators and criminal defendants, thereby affording the accused a "fair opportunity to present a complete defense to the jury." See Brady, 373 U.S. at 87.

When the government withholds material, exculpatory evidence - whether knowingly or inadvertently - it denies the defendant a [fair trial] and risks convicting an innocent. Withholding exculpatory evidence may impair the "preparation or presentation of the defendant's case." Bagley, 473 U.S. at 683. (Emphasis). Suppression of exculpatory information rises to the level of materiality under Brady when "the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Kyles, 514 U.S. at 435.

In the instant case, prosecutor's suppressed exculpatory information that "a State Grand Jury had not convened to find probable cause" in violation of their Constitutional obligation under Brady, and Art. I, § 11 and Art. V, § 22. The State Grand Jury's role had been usurped by prosecutorial misconduct, this fact is evident, clear, and plain - and supported by direct evidence from this very Court, South Carolina Supreme Court; the State cannot overcome this evidence presented as Exhibits A and J.

Relying on Supreme Court precedent, the Court held in, Montgomery V. Louisiana, Supreme Court of the United States - Jan. 25, 2016 577 U.S. 190, "A conviction or sentence imposed in violation of a substantive rule of constitutional law is not just [erroneous] but [contrary] to law and, as a result, [void] and it follows, as a [general principle], that a court has no authority to leave in place a conviction or sentence that violates a substantive rule."

* Prejudice *

Prejudice is damage or detriment to one's [legal rights]. Accordingly, defendant was prejudiced his procedural due process right to:

- "review and to reproduce the stenographically or electronically recorded materials" (though they don't legally exist), pursuant to § 14-7-1720(A) and (D) and Rule 5, SCRPC;
- his due process right to Section 14-7-1770(C);
- Art. I. § 11, Art. V. § 22; Effective Assistance of Counsel (6th Amend);
- his rights to discovery under Brady V. Maryland, 373 U.S. 83 (1963)
- his due process right to a fair trial under the Sixth and Fourteenth Amendments;
- his due process right to the "effective assistance of counsel" under the Sixth and Fourteenth Amendments;
- his due process right to have an "impartial finder of fact" assigned to his case;
- his right pursuant to Section 14-7-1700;
- his due process right to "mount or prepare a defense" and to present that defense to the sentencing jury;
- his due process right under State Constitution pursuant to Art. I. § 3.
- his due process rights under Evans V. State, 363 S.C. 495, 611 S.E.2d 510 (2005);
- his due process of law pursuant to the Fourteenth Amendment.

It is well established that in a criminal prosecution the government must either make all potentially exculpatory material in its possession available to the defense, or abandon the prosecution. See, e.g., Dennis V. United States, 384 U.S. 855 (1966); Brady V. Maryland, 373 U.S. 83 (1963); Rovario V. United States, 353 U.S. 53 (1957); Butler V. Maroney, 319 F.2d 622, 627 (3rd Cir. 1963).

Presentation of a defense is a factor that goes to the very heart - the integrity - of the [adversary process], on this principle, Mr. Roberts alleges structural error in that ... 1.) the suppression of exculpatory evidence prevents the presentation of a complete defense; 2.) trial judges erroneous rulings infringed Mr. Roberts due process of law to "mount or prepare a defense"; which directly affected the very framework of the adversary process. There appear to be at least three broad rationales for finding an error to be structural. One is when the right at issue does not protect the defendant from erroneous conviction but instead protects some other interest - like the defendant's [right] to conduct his own defense - where harm is irrelevant to the basis underlying the right. See United States v. Gonzalez-Lopez, 548 U.S. 140, 149, n. 4, 126 S.Ct. 2557, 165 L.Ed. 2d 409. (Emphasis).

"Structural error" is that which affects the basic framework within which the trial proceeds and which so undermines the proceedings that the trial cannot reliably serve its function as a vehicle for determination of guilt or innocence. When State [repeatedly] suppressed exculpatory evidence and trial judge [repeatedly] infringed Mr. Roberts right to "mount or prepare a defense" (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7), this resulted in "structural error", not subject to harmless error analysis.

* Violation of the Sixth Amendment Right to "Effective Assistance of Counsel"/Due Process of Law and the Sixth Amendment Right to the Confrontation of Witnesses against him *

S.C. Const. Art. 1, § 14 - "The right... to be confronted with the witnesses against him". There can be no doubt that a defendant has a constitutional right to be confronted by the witnesses against him. Art. 1, Section 18, of the 1895 Constitution of South Carolina provides: "In all criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him; This constitutional right is restated in Section 17-506 of the 1952 Code of Laws of South Carolina, which provides: "Every person accused shall, at his trial, have a right to meet the witnesses produced against him face to face. The defendant cannot be denied the right to cross-examine the witnesses against him. State v. McNinch, 12 S.C. 89. The personal presence of a witness is required so that the accused may cross-examine him. State v. Bigham, 133 S.C. 491, 131 S.E. 603. Affidavits and depositions are inadmissible in evidence in a criminal case. State v. Hester, 37 S.C. 145, 134 S.E. 885; State v. Murphy, 48 S.Ct. 1, 25 S.E. 43. Despite controlling case law and the State Constitutional provisions; as well as the provision of the Sixth Amendment's Confrontation Clause, ineffective assistance of counsel - Timothy Griffith" stipulated to Chain of 16.)

Custody", thereby depriving Mr. Roberts of a substantive or procedural right to which the law entitles him (Sixth Amendments Confrontation Clause as a substantive right; Rule 6, S.C. Rules of Criminal Procedure as a procedural right) (Emphasis). (Tr. July 24-28, 2017, Page 74, lines 4-25; Page 75, lines 1-7). This "stipulation" was made without: 1.) Without Mr. Roberts consent; 2.) Without on record Colloquy to establish a waiver of a "constitutional or statutory" right. In State V. Orr, 304 S.C. 185, 403 S.E. 2d 623 (1991), the Supreme Court of South Carolina held that waiver of a constitutional or statutory right [must] be knowingly and voluntarily established on the record by colloquy between either the court and the defendant, or between the court and defendant's counsel, or both. There was no colloquy established on the record, nor would have Mr. Roberts consented to such. The Defendant, pursuant to Rule 6, S.C. Rules of Criminal Procedure - would have required that any [chemist], [analyst], and [all] persons within the chain of custody appear in Court for the purpose of personally testifying. Defendant thus objects to the introduction of any chemist's or analyst's report pursuant to Rule 6, S.C. Rules of Criminal Procedure. Defendant requested on the grounds that it is [essential] to [insure] the Defendant's [right to a fair trial], [right to Confrontation of witnesses], the [right to effective counsel] and [due process of law guaranteed] by the South Carolina Constitution and the United States Constitution. In violation of Mr. Roberts Sixth Amendment right to "effective assistance of counsel"; his Sixth Amendment right to Confront witnesses; his due process of law; and his procedural due process pursuant to Rule 6, S.C. Rules of Criminal Procedure, trial counsel ineffectively, at critical stage of trial proceeding, "stipulated" to the Chain of Custody to Accommodate prosecution to "greatly truncate" the States "long list of witnesses", thereby relieving prosecution's burden of proving his case (Tr. July 24-28, 2017, Page 74, lines 4-25; Page 75, lines 1-7). Trial counsel's errors contaminated the trial and manifest a "breakdown in the adversarial process" rendering defendant's trial fundamentally unfair by "stipulating" to the chain of custody and relieving prosecution's burden to prove his case; but also when trial counsel failed to object to the admission of testimonial hearsay statements read into the record by Agent Justin Wingo (Tr. July 24-28, 2017, Page 703, lines 6-12; Page 710, lines 15-23; Page 713, lines 4-12), and officer Misael Vasquez (Tr. July 24-28, 2017, Page 658, lines 11-15; Page 659, lines 20-24; Page 660, lines 21-25; Page 675, lines 9-12; Page 675, lines 16-18), to prove the truth of the matter.

In Crawford, the court held that, absent a prior opportunity for cross-examination, a testimonial statement by an unavailable witness, offered against a defendant [to prove the truth of the matter] asserted, is categorically barred by the Confrontation Clause. In the case where the prosecution used certificates from State laboratory analyst to prove that material linked to the defendant was cocaine, the U.S. Supreme Court ruled this practice violated the defendant's Sixth Amendment rights under the Confrontation Clause. This clause [guarantees] a defendant the right to confront their accusers in court. The Court, citing the Crawford v. Washington decision, determined that the certificates were equivalent to testimony that should have been presented in person at trial, as they were critical in proving the nature of the substance involved. The Supreme Court rejected arguments that these certificates were just neutral, scientific results or akin to traditional official records, emphasizing that the analyst's who prepared them needed to be available for cross-examination. The case was reversed and remanded, reaffirming that testimonial evidence cannot be used against a defendant without giving them the opportunity to cross-examine the witness who created such evidence. See, Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009).; See also, Bullcoming v. New Mexico, 564 U.S. 647 (2011). The U.S. Supreme Court ruled that the Confrontation Clause of the Sixth Amendment requires that forensic laboratory reports used as evidence in criminal trials must be presented by the analysts who conducted the tests. The case involved Bullcoming, whose DWI charge conviction was based on a lab report that stated his blood-alcohol level was above legal limits. The analyst who performed the test, Caylar, did not testify; instead, another analyst, Razatos, who was familiar with the testing procedures but did not perform Bullcomings test, testified. The Supreme Court found this substitution inadequate, emphasizing that the accused has the right to confront the specific analyst who prepared the testimonial report, unless that analyst is unavailable, and the defendant had a chance to cross-examine the analyst before the trial. This decision upholds the court's commitment to ensuring that defendants can challenge the reliability and credibility of forensic evidence used against them. The testimonial hearsay statements that Agent Justin Wingo and officer Misael Vasquez testified to violated the Confrontation Clause and due process of law and as a result in the infringement of Mr. Roberts right to the "effective assistance of counsel". Trial counsel ineffectively failed to object to out-of-court statements testimonial in nature.

When trial counsel, Timothy Griffith "stipulated" to the Chain of custody - he infringed Mr. Roberts due process of law pursuant to Art. I, § 3 and the Fourteenth Amendment due process of law resulting in the violation of Mr. Roberts Sixth Amendment right to Confrontation. "Ineffective Assistance of Counsel" did [deprive] defendant of a substantive or procedural right to which the law [entitles] him. See., Williams, 529 U.S. at 393. Prejudice component of the Strickland test focuses on the question whether counsel's deficient performance renders the result of the trial unreliable or the proceeding fundamentally unfair. 466 U.S., at 687, 104 S.Ct. 2052; See., Kimmelman, 477 U.S., at 393, 106 S.Ct. 2574 (Powell, J. concurring). Unreliability or unfairness does not result if the ineffectiveness of counsel does not deprive the defendant of any substantive or procedural right to which the law entitles him. In the instant case, defendant was deprived his substantive right under the Sixth Amendment to Confrontation; and his right pursuant to Rule 6, S.C. Rules of Criminal Procedure.

Counsel's deficient performance prejudiced the defense. Counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. When Agent Justin Wingo and officer Misael Vasquez read into the record "testimonial hearsay" [to prove the truth of the matter] and trial counsel failed to object and cite controlling precedent - his inaction prejudiced Mr. Roberts defense. U.S.V. Williamson, 183 F.3d 458, 463-64 (5th Cir. 1999) (counsel's failure to cite directly controlling precedent was ineffective assistance because it was objectively unreasonable and resulted in prejudice to defendant). Trial Counsel prejudiced "Mr. Roberts Sixth Amendment right to Confrontation and his right pursuant to Rule 6, S.C. Rules of Criminal Procedure - in order to "greatly truncate prosecutions long witness list (Emphasis) (Tr. July 24-28, 2017, Page 74, lines 4-25; Page 75, lines 1-7). Defense counsel has duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process. U.S.C.A. Const. Amend. 6. Counsel's errors/acts/omissions were outside wide range of professional competent assistance - counsel's function is to make adversarial testing process work in a particular case. U.S.C.A. Const. Amend. 6. In the instant case, Counsel: 1.) Stipulated to all the evidence to accommodate prosecutions long witness list" (without consent of defendant), thereby infringing Mr. Roberts right to the Sixth Amendment Confrontation Clause; 2.) failed to object and cite controlling precedent pursuant to Crawford V. Washington, regarding "testimonial hearsay statements" made by Agent Justin Wingo and Misael Vasquez (U.S.V. Williamson, 183 F.3d 458, 463-64 (5th Cir. 1999); 3.) was ineffective assistance of Counsel that did deprive defendant of a substantive (Confrontation) or procedural right (Rule 6, S.C.Rim.P) to which the law [entitles] him. Williams, 529 U.S. at 393. (Emphasis). "Actual or Constructive denial of Assistance of counsel Altogether is legally presumed to result in prejudice. U.S.C.A. Const. Amend. 6.

*** Extrinsic Fraud ***

*** Fraud Upon The Court ***

Fraud upon the court occurs when an officer of the court - such as a prosecuting Attorney - engages in misconduct that corrupts the judicial process itself, preventing full and fair presentation of the case. See., Chewning V. Ford Motor Co., 354 S.C. 2 (2003); Ray V. Ray, 374 S.C. 79 (2007). On April 12-13, 2016, South Carolina Attorney General, Alan Wilson/or his Agents - Assistant Attorney Generals Joshua Underwood, and David Fernandez conspired with former Clerk of the State Grand Jury, James R. Parks, to usurp the State Grand Jury's independent role by prosecutorial misconduct resulting in the willfully "rubber-stamping" of Petitioners indictments, and thus, committing fraud upon the Court. Mr. Roberts sham indictments were filed and then submitted to the court. This corrupted the judicial process and prevented Mr. Roberts from fully and fairly presenting his case during trial constituting extrinsic fraud. Fraud upon the Court will be found where the fraudulent scheme, considered unconscionable, defrauds the judicial machinery or is perpetrated by an officer of the court such that the court cannot perform its function as a neutral arbiter of justice. Martina Theatre Corp. V. Schine Chain Theatres, Inc., 278 F.2d 798, 801 (2d Cir. 1960). Accordingly, the Attorney General/or his Agents "improper influence exerted on the court by an attorney, which the integrity of the court and its ability to function impartially was directly impinged was demonstrated by a "deliberately planned and carefully executed scheme to defraud not only Mr. Roberts, but the Court itself." The judicial impartiality was polluted by erroneous rulings by the trial judge denying discovery in the form of the State Grand Jury "impanelment documents" (or rather lack of) in order to aid and abet and to suppress or conceal exculpatory evidence in a collusion with the State to manufacture and obtain a fraudulent conviction procured by a Fraud upon the Court causing a legal perversion. Supporting Mr. Roberts contentions and claims are Exhibits A and J, establishes the fraud upon the court occurred - as well as the suppression of willful intent of the trial judge; failed obligations under Brady V. Maryland by the prosecution; And failure to [object] by trial counsel each time Mr. Roberts moved for the production of "Alleged" impanelment documents (that do not legally exist) (Emphasis). Trial judges erroneous rulings "deprived Mr. Roberts of the opportunity to be heard;" and "concealing of documents by an attorney during the course of litigation constitutes fraud upon the court (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 1-6; Page 85, lines 5-7) (Emphasis). Fraud upon the court requires a showing that one has acted with an intent to [deceive] or [defraud]... At trial, before the swearing of the jury, Mr. Roberts moved for the production of the State Grand Jury impanelment documents" when he stated: "I would also like the State Grand Jury minutes" (Tr. July 24-28, 2017, lines 1-5). Trial judge's ruling shows she acted with an intent "to [deceive] and demonstrates she intended to [defraud] when she erroneously and fraudulently ruled: "... You [don't] get those. In South Carolina, [all] Grand Jury proceedings are secret. [Nobody] gets those" (Tr. Page 1, lines 7-9) (Emphasis) - Trial judge's ruling was in fact "a lie"; A crime of moral turpitude and a fraud upon the court that corrupted the judicial process; Judge concealed documents (or lack of) during course of a litigation constituting fraud upon the Court.

* Prosecutorial Misconduct *

"A prosecutor must see that no conviction takes place except in strict conformity with the law, and that the accused is not deprived of any constitutional rights or privileges." In re Richland County Magistrate's Court, Supreme Court of South Carolina, Sept. 7, 2010 389 S.C. 408.

"Substantive due process" protection prevents the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty. Yarbrough v. East Wake First Charter School.

Defendant was accused of crimes not investigated by a State Grand Jury, and prosecutor's allowed government agents to make false and misleading statements prejudicing defendant. See., U.S. v. Hogan, 712 F.2d 757, 761-62 (2d Cir. 1983). Although deliberate introduction of perjured testimony is perhaps the most flagrant example of misconduct, other prosecutorial behavior, can/did cause improper influence and usurpation of the grand jury's role. The incidents related are flagrant and unconscionable. Taking advantage of his special position of trust, the Attorney General/his agents Joshua Underwood, David Fernandez conspired with James R. Parks to impair the grand jury's integrity as an independent body and prevent defendant from exercising his 1.) Fourth Amend. right to probable cause; 2.) Sixth Amend. right to be informed of the nature and cause of accusation against him; 3.) Fourteenth Amend. right to "Notice" and "preparation of a defense"; 4.) Sixth Amend. right to a fair trial; 5.) Fourteenth Amend. right to due process; 6.) Mr. Roberts rights under South Carolina State Constitution pursuant to Art. I. § 11 and Art. V. § 22. Reference to relevant statute in caption of an indictment does not validate an invalid indictment; caption of an indictment [is not] a part of the "finding of the grand jury." State v. Knuckles, 348 S.C. 593, Court of Appeals of South Carolina. Under the applicable guidelines prosecutors have an [ethical obligation] strictly to observe the status of the grand jury as an independent legal body. See., American Bar Association, Standards For Criminal Justice Standard 3-3.5 at 3-48 (2d ed. 1980).

Defendant's trial proceedings were marred by a fundamental defect that inherently resulted in a complete miscarriage of justice, or in omissions inconsistent with rudimentary demands of fair procedure.

The State Grand Jury's unlawful indictment process and subsequent criminal acts committed by prosecutors and Clerk of State Grand Jury (Former), resulted in an illegal grand jury, void indictment, and a violation of every component of the Due Process "Notice" requirement owed to Mr. Roberts by this State.

Prosecutors Joshua Underwood, David Fernandez and co-conspirator James R. Parks undermined the integrity of the grand jury as an independent legal body and prosecutors offered/encouraged perjured testimony at defendant's trial. See., Ortega V. Duncan, 333 F.3d 102, 108-09 (2d Cir. 2003) (due process violated by admission of perjured testimony). Supporting Mr. Roberts contention that the State Grand Jury's independent role had been usurped by prosecutorial misconduct is indisputable exculpatory evidence/direct evidence from South Carolina Supreme Court, Court Administration,

Exhibit A, which states: "You are requesting a transcript from State Grand Jury proceedings. This is to advise that there is no court reporter assigned to record Grand Jury proceedings, and therefore, there is no transcript available"; (Enclosed)

Exhibit J, which states: "This is in response to your letter ^{Co-Defendant} (Justin Hunter) that we received on September 6, 2018, requesting information so that you might contact the Court Reporter who covered the April 12-13, 2016, meeting of the State Grand Jury. Please note that our [records] "do not show" that the State Grand Jury [met that week]..."; (Enclosed)

Suppression of exculpatory evidence at trial of those very same documents, or rather, lack of: (Tr. July 24-28, 2017, Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7) (Emphasis).

"The indictment is the charge of the State against the defendant, the pleading by which he is informed of the fact, or of the nature and scope of the accusation," as evidenced by Court Admin. (Exhibit A) correspondence to Mr. Roberts: "there was no court reporter assigned to record state grand jury proceedings," State V. Baker, 411 S.C. 583, Supreme Court of South Carolina, Feb. 11, 2015; and as evidenced by Court Admin. (Exhibit J) correspondence to Justin Hunter (Co-defendant) - "Supreme Court [records] do not show that the State Grand Jury [met that week]" (Emphasis); and as evidenced by the suppression of "alleged" state grand jury minutes at trial (Tr. Page 15, lines 5-9; Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7); nor has Ind. # 2016-BG-47-02 in harmony with S.C. Code Ann. § 14-7-1640, as the indictment was not "certified," nevertheless, Exhibits A and J makes it abundantly clear the grand jury had [not] been convened (Emphasis).

* Violation of the Right to an Impartial Adjudicator *

"Some constitutional rights are so basic to a fair trial that their infraction can never be treated as harmless error." The right to an impartial adjudicator, be it judge or jury, is such a right. Gray V. Mississippi, 481 U.S. 648, 668 (1987) (quoting Chapman V. California, 386 U.S. 18, 23 (1967)). The Court has held that "a fair trial in a fair tribunal is a basic requirement of due process", and that "a necessary component of a fair trial is an impartial judge. Weiss V. United States, 510 U.S. 163, 178 (1994) (internal citation omitted). Fairness requires not only "an absence of actual bias in the trial of cases", but also rules and safeguards "to prevent even the probability of unfairness". In re Murchison, 349 U.S. 133, 136 (1955). As the Court has held, due process requires, at a minimum, that defendant's be afforded "a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker." Hamdi, 542 U.S. at 533. The impermissible fusing of prosecutorial and judicial functions is particularly problematic. As the Court has explained, "it would be very strange if our system of law permitted a judge to act as grand jury and then try the very persons accused as a result of his investigations". In re Murchison, 349 U.S. at 137. Having been involved in the accusatory process "a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused". Id. The Court has jealously guarded "the right to trial by judge who has [no stake] in the outcome, because the principle of impartiality ensures that no person will be deprived of interest in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him". Marshall V. Jerico, Inc., 446 U.S. 238, 242 (1980). The trial judge must act with absolute impartiality in the performance of judicial duties. State V. Pace, 5 S.C. 1994) 316 S.C. 71, 447 S.E. 2d 186.

Trial judge deprived defendant of his fundamental rights "shocking to the universal sense of justice". Commonly accepted norms of fundamental fairness includes: "Notice" and "preparation of a defense"; "to be informed of the nature and cause of accusation"; "right to a fair trial an impartial adjudicator"; "right to Self-Representation"; and to due process of law - Judge Jefferson violated these fundamental rights, colluded with the prosecution to bring about an obtain a conviction based or procured by a fraud upon the Court. Judge Jefferson violated Mr. Roberts due process right to have a judge assigned to his case in a manner free from bias or the desire to influence the outcome of the proceedings. U.S.C.A. Const. Amend. 14. 23)

Government commits outrageous misconduct when it behaves in a manner that violates "fundamental fairness" and "shocks... the universal sense of justice."

There are two types of substantive due process rights: (1.) claims asserting denial of a right, privilege, or immunity secured by the Constitution or by Federal statute, and (2.) claims directed at official acts which may not occur regardless of procedural safeguards accompanying them.

Example 1. Denied Fundamental Right To Mount OR Prepare A Defense.

At trial, before the swearing of the jury, Mr. Roberts moved the Court for the production of the State Grand Jury "transcript" when defendant stated: "I would also like the State Grand Jury minutes" (Tr. July 24-28, 2017, Page 15, lines 5-6); to defendant's request, the trial judge stated:

"You don't get those, sir. In South Carolina, All Grand Jury proceedings are secret. Nobody gets those." (Tr. Page 15, lines 7-9)

Not only does this ruling by the judge constitute a violation of procedural due process and statutory law pursuant to the 14th Amend. and Section 14-7-1720(A) and (D) and Rule 5, S.C.R. Crim.P.; and Section 14-7-1770(C); but this ruling also infringes upon the defendant's right to "mount or prepare a defense" and ensure protection of his due process rights. See, EVANS V. State (S.C. 2005) 363 S.C. 495, 611 S.E.2d 510. This ruling was erroneous; "A lie and a crime of moral turpitude" and a fraud upon the Court that corrupted the judicial process itself, preventing a full and fair presentation of the case and persisted throughout the course of the proceedings (Tr. Page 19, lines 8-16; Page 73, lines 3-6; Page 85, lines 5-7) See Chewning V. Ford Motor Co., 354 S.C. 72 (2003); also Ray V. Ray, 374 S.C. 79 (2007); Accordingly, an Attorney who conceals documents during the course of a litigation commits extrinsic fraud upon the court, which defrauded the judicial machinery - which was an "Official Act" which may not occur regardless of procedural safeguards accompanying them. Defendant was deprived of his fundamental right to "Notice" and "right to mount or prepare a defense"; his Sixth Amendment right "to be informed of the nature and cause of accusation against him"; and his fundamental right to a fair trial pursuant to the Sixth Amendment and the due process of law pursuant to Art. 1, § 3 of the State Constitution and the 14th Amend. of the U.S. Const. At one point, Judge Jefferson questioned: "I guess I'm trying to figure out what is it that you think you would be able to use from the State Grand Jury record?" (Tr. July 24-28, 2017, Page 19, lines 8-10); Mr. Roberts answered and replied: "Well, I'm actually going to show that [no] State Grand Jury even occurred... or convened" (See Exhibits A and J) (Tr. Page 9, lines 11-12) (Emphasis). What use the petitioner might have made of the knowledge wrongfully [denied] him or what profit he might have gained by it may not be assumed. Even if that assumption might be made, such a substantial error spoils all it touches. Infringements upon constitutional rights may never be so lightly regarded. Stroble V. California, 343 U.S. 181, 198. In United States V. Baldi, 104 F. Supp. 321, 328 (E.D. PA.) "the defendant was denied due process of law by the States suppression

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of evidence relevant only to the degree of punishment for felony murder. The court set aside the ... trial, verdict, conviction and judgment of sentence ... and granted the writ of habeas corpus. The decision was affirmed by the Court of Appeals in, United States V. Baldi, 195 F.2d 815 (C.A.3), cert. denied 345 U.S. 104, reh. denied 345 U.S. 946. When the Court of Appeals found that the Petitioner had been deprived of due process of law, that court was not free to [speculate] upon what part of the trial might not have been tainted by the State's [suppression] of evidence. Griffin V. United States, 336 U.S. 704, 708-709; Blackburn V. Alabama, 361 U.S. 199, 206.

Mr. Roberts was prejudiced his right to an impartial adjudicator. Mr. Roberts contends that the infringement of this right is deemed [structural]. Because structural errors are defects in the constitution of the trial mechanism, they defy analysis by harmless-error standards. Structural errors deprive defendant's of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence. Judge Jefferson's partiality is rooted in the record affecting substantial constitutional rights and procedural rights that render Mr. Roberts trial "fundamentally unfair" causing prejudice to his Sixth Amendment right to a fair trial.

* CONCLUSION *

In sum, in light of deprivation of a specific constitutional guarantee, the Constitution's articulation of a remedy for such a deprivation and the pernicious effects of such a deprivation, the Court should hold that the error that occurred is structural. To hold otherwise, as would effect a fundamental change in the criminal process.

I, Mr. Emory W. Roberts Jr., attest, Under the Penalty of Perjury that all claims herein are true and accurate and that I have enclosed this "Addendum/Supplement Brief" to my already filed Appeal that's being held in Abeyance along with a Pleading for Declaratory Judgment dated 1-7-2025 pursuant to a "January 16, 2025 correspondence from Patricia A. Howard of South Carolina Supreme Court (Enclosed). Also enclosed is a correspondence from the Clerk (Patricia A. Howard) dated 1-29-2025 regarding obtaining a transcript from P.C.R. proceeding (April 18, 2023), that I would ask be taken out of Abeyance, and instructed on how to proceed on obtaining the transcript for I've written to the Court Reporter and the Court Administration, and Supreme Court at least 3 times already - I'm an indigent prisoner. Also enclosed is Exculpatory Evidence - Marked as Exhibit A and J... and an Affidavit from Justin Hunter (Co-defendant) dated December 30, 2025

Further Affiant Sayth Not.

Sworn to and Subscribed
before me this 17th day of
March, 2026

Alex J. Day
Notary Public For South Carolina

Mr. Emory W. Roberts Jr.
Affiant/Appellant