State of South Carolina
In The Court of Appeals

Clerk of Court
SC Court of Appeals
1015 Sumter St
Columbia, SC 29201

January 27, 2014
To: The Chief Appeallant Judge
RE: AMENDED EXPLANATION FOR APPEAL

The Appellant filed a notice of appeal with this court on Dec 11, 2013. The appeal was in response to the sentence that was imposed on Dec 3, 2013. Pursuant to SC Court of Appeals Rule 203, The Appeallant had (20) days to submitt to the court an letter of explanation why he was appealing a guilty plea. The letters were completed and submitted to the court dated on January 6, 2014.

However, this letter is an Amended explanation for appeal by the Appeallant. The "Amendments" of this letter are not meant to be changes of the issues submitted to the Court on January 6, 2014, but they are submitted with the hopes to be added and included with the issues previously submitted.

The Appeallant respectfully request an exception to Rule 203, due to the Prejudice by the Department of Corrections. During the intial (20) days, the Appeallant was deprived of law library access and could not cite and support his issues with legal authority. Since then, the Appeallant has compiled necessary facts and legal authority to support his issues of appeal. Therefore, the Appeallant respectfully request for the court to accept these updated issues for the same notice filed with the court on Dec 11, 2013.

There was no way the Appeallant could have previously obtaine the Amended datas. The intial twent days expanded between Dec 17. - Jan 6, 2014, which was the christmas and New year holidays. The Defendant is also on lockdown 23 hours a day at Kirkland.

In conclusion, the Appeallant prays the issues of this amended letter are accepted and considered along with the remaining issues submitted to the court on January 6, 2014. The Appeallant also prays an appeal is granted upon review.

Respectfully Submitted,

Vincent Rice #316178
Appeallant
Kirkland R&E
[illegible] Broad River Rd
Columbia, S.C 29210

P.S. The Appeallant respectfully request a filed copy if possible

RECEIVED
FEB 03 2014
SC Court of Appeals

The circuit court had no jurisdiction to accept a guilty on all the P.W.I.D convictions. The court lacked ~~least~~ subject matter jurisdiction because the P.W.I.D indictments did not sufficently state the offenses, therefore there was an insufficent "factual" basis for a guilty plea. The form and statements of the allegations within these indictments are made insufficent and void in several ways. I shall support this issue with the facts.

An indictment is an accusation in writing presented by the grand jury. However, there are general rules and principals of form that must be followed to make an indictment sufficent in law. The following legal authority was referred by *Blackstone Legal Assistant Vol VI*.

Rule I: An Indictment must not be Repugnant or Double

An indictment is "Repugnant" if matter is in oppoisiton (or oppoisite) to what's stated in another part, if so the whole is void. It should be noted the matter within the P.W.I.D indictments proves to be Repugnant. For example, indictment # 05-40-01613 states that, I DID, manufacture, distribute, dispense, deliver a quantity of Marijuana. On the contrary, it also states I DID purchase a quantity of Marijuana. The allegations are "Repugnant" against the rules of law. because they are in oppoisiton. S.C section 44-53-110, will clarify that the terms; Distribute, Manufacture, Dispense and Deliver indicates a "Seller" of narcotics for profit. The term purchase indicates a "Buyer" of narcotics. ~~Did~~ "Buy" is the oppoisite of did "Sell", this makes the matter Repugnant and void. This matter also gives grounds for Double Pleading or Duplicity.

Rule II: Statements must not be in the Alternative.

Indictments must be made in a positive manner and not in the "Alternative." It can't allege one fact "OR" another fact as true, but must allege one of the facts as true fact. Alternative statements are void, because it leaves it uncertain which offense was committed. *Blackstone*

The body and statements of the P.W.I.D indictments are proven to be "Alternative" against the rules of law. The indictment states I DID ①, Manufacture, Distribute, Deliver ② OR aid, abet, attempt ③ OR conspire to manufacture, distribute, deliver ④ OR possess with the intent to manufacture, dispense, deliver ⑤ or purchased a quantity of Marijuana. The word DID indicats FACT; however the statements following the word DID, gives multiple alternatives to the fact or facts. The facts must be allged with certainty and particularity. The Alternative facts gives the indictments of P.W.I.D too great of a latitude for conviction. Indictment # 01613, there are 19 different varations of the offense; It's a matter of choose a fact, if that doesn't fit choose another one. This is not sufficent in law. The state must prove affirmatively every fact and circumstance constituting the offense as stated in the indictment *Blackstone*. Furthemore, the allegations in the P.W.I.D indictments are of multiple particulars, which results in a failure of proof on the evidence that can be produced. Indictments are intended to state the facts of a single offense, the facts must be stated with certainty and particularity. upon review it should be noted the court had no factual basis to accept a guilty plea, due to Alternative and Repugnant allegations.

Rule III: Guilty Knowledge is an essential and material element and must be employed to make the indictment good.

Pertaining to the offenses of Possession with the Intent to Distribute, "Knowledge" of the substance presence is a material element, as a reslult the Defendant's guilty Knowledge must be stated in the caption. The Defendant must "Knowingly" possess a substance, before they develop intentions to deliver or dispense it. Guilty knowledge must be alleged to prove the criminal liability that the Defendant did "possess" narcotics for the purpose of making a profit. "Knowledge may be equated with or substituted for intent element", ct. State v. Kimbrell. "A Defendant must have knowledye of contraband" ct. State v. Goldsmith. Again guilty knowledge must be shown in the indictment to prove the Defendant "knew" he was commiting the act. In such cases, words of art should be used, such as "knowingly", "willfully" or "feloniously".

These are technical words and have established meaning, without them the alleged act is incompiete. It should be noted, the P.W.I.D indictments of my case failed to include knowingly or willfully, material elements that are essential to a criminal mind. The indictments are in error because it's uncertain if I committed an offense. This is true because omitting guilty Knowledge suggest I unconsicously violated the law. There are no exact quantities of the substances stated in the indictments, neither is there allegations of guilty Knowledge, therefore it must be presumed I had a criminal mind to distribute, deliver or manufacture narcotics. This violates due process. "In order to prove a violation of 44-53-370, the state is required to show the Defendant was at least criminally negligent." "A mental state is required for the distribution of cocaine", ct State v. Ferguson 345SE2d 182.

Furthermore, the statments in the P.W.I.D indictments alleges I made an "attempt" of an unlawfull offense, as in attempted to manufacture, distribute or deliver a substance. According to *Blackstone*, the crime of attempt requires specfic intent, spectic intent requires allegation of a guilty knowledge, in the crime of attempt general intent doesn't suffice. When the allegation of attempt is shown, the Defendant must knowingly attempt the act. "Whatever mental element the law specifies must exist and be proved. On an indictment the appropriate specfic intent must be proved or the Defendant can't be convicted", ct *Blackstone*. When there is a specfic intent alleged as an attempt, the act and intent (criminal mind) must accur at the same time.

If the statue or the P.W.I.D indictments are not required to show guilty knowledge of such allegations, this would be a violation to my constitutional rights of due process and deprive me of equal protection of the law. This is true because I would suffer injustice for unconsicously violating the law, or be convicted of an act that was never carried out according to criminal liability. The State would have no Burden of Proof.

In conclusion, the court did not have jurisdiction of the subject matter, therefore it's proceedings were null and void. The issues ive stated will prove the indictments were not alleged with certainty and particularity to make them sufficent in law. I ask the court to review this issue for appeal.

Unlawful Amendments or New Conditions Added by the Court

I was sentenced under CDR code #'s that were not returned on the indictments. It should be noted, the CDR codes on the sentencing sheets are different from the codes on the indictments. This is deterimental because the Department of Corrections determines the length and guidelimes of a prison sentence based upon the CDR codes on the sentencing sheets. 24-13-100. As a result the Administration confines a prisoner based on the "Criminal Docekt Report"(CDR), not the statues. In, State v. Bennett 650 SE2d 490, the Appeallant Court emphasized, the CDR codes are not the law, and that the litigated statues should be consulted in determing a prison sentence. It also found that it is the Court's responsibility to ensure the CDR codes are consistent with the indictments for the offense. This cases was remanded based on the findings.

The Circuit Court did amend the CDR codes of the indictments without my knowledge, as a result my prison term guidelines were deterimined by the Amendments. In, State v. Means It was found a trial shall proceed in all respects and with the same consequences as the indictment had orignall been returned 17-19-100.

Furthermore, the Court had no jurisdiction to amend the CDR codes at or after the plea proceedings. This is true because to my knowledge the CDR codes "changes" pose a "greater consequense" than the codes on the indictments, State v. Rhinehart.

In addition, I did not know I would recieve a "strike" against me in the plea arriaingment. This came as a complete surpise during the plea proceedings. [redacted] Neither did my Counsel or the solisitor mentioned that I would recieve a strike in the negoiated plea, therefore, it was not part of the plea bargin. This was a crucial element and it should have been made known before the plea proceeding. The S.C supreme Court has emphasized the constitutional right of the Defendant to notice of the charge and to stress that there must be no suprise to the Defendant by any amendment. The amended CDR codes and the strike, both came as a suprise to me. these events did change the condition of the orignal plea agreement.

Insufficent and Invalid Indictments

The indictments of my convictions were insufficent for a guilty plea to be accepted. They were not filed and processed with the Clerk of Court and served according to due process of the Jurisdiction of the Court. According to *Blackstone Pleadings & Practice*, Judgement can only be given after an indictment has been filed. It's generally held that the court can aquire no Jurisdiction of prosecution unless an affidavit and indictment is filed. Where an oath is required a pleading or indictment is insufficent if it isn't verified. This is true to avoid false and fictitious indictments. *Blackstone*.

Specifically, South Carolina law provides that

(t)he clerk shall:

(a) issue every execution, bench warrant or other processes issuable or directed to be issued by the courts of sessions in the name of the Attorney General or Solicitor of the circuit (b) issue all rules and notices ordered in the common pleas. (c) attest in his own name under the seal of the court, all writs and processes issued either in the common pleas or general sessions and (d) sign offically all judgements and state the time each was signed and entered. id 14-17-260, 14-17-10

Furthermore, indictments are presented upon an oath, therefore there required to be attested, filed and verified by the Clerk. A "true billed" indictment is also an action or judgement by the grand jury, which confirms it must be offically signed and stamped with a time by the clerk.

It should be noted the indictments in my possession were not attested by the Clerk under the seal of the court, neither did the clerk offically sign and state the time in which each indictment was entered. Therefore the indictments that omits an attest under seal and the filing time are not sufficent in law. These documents require an oath, which means they must be properly processed and verified by the Clerk. Judgement could not be given on these invalid indictments, therefore a plea could not have been accepted.

In conclusion, indictments that are attested in the Clerk's own name under the seal of the court and are offically signed by the Clerk, included with the time and date they were entered, are made valid and good. This is the first orderly process that must be done to give the Court Jurisdiction to sentence a Defendant. Upon review it will be proved the indictments of my case were not properly processed. This constituted a legal error.

Ineffective Assistance of Counsel

A.) In criminal cases it's an attorneys lawful and professional duty to discover if the court has jurisdiction over the subject of action, and if his client has been properly served with process of the law; *Blackstone*. Mr. Chaplin neglected this duty. This is true because I was not properly served with orderly process of the lawon the returned indictments of my case. As orderly procedure, the clerk of court must: 1.) attest in her own name under the seal of the court, all writs and processes issued in sessions court 2.) sign officially all judgements and state the time when each was signed and entered, 14-17-260. My indictments do not have the attestment of the Clerk under the court's seal, neither did the clerk sign the writs and indictments, stating the time and date filed. Therefore I was not properly processed. The fact my counsel failed to contest these defects, proved him to be ineffective.

B.) My counsel also proved to be ineffective regarding the court's jurisdiction of subject matter. I did convey to my counsel that I didn't fully understand the nature of the P.W.I.D indictments. I asked him how I could be convicted of multiple allegations as one offense. Regarding the definition of P.W.I.D he stated, "oh, they make it broad enough to put a barn through it, that way they're sure to get a conviction". I made a request for him to dissmiss the indictments, he said he would only move to dismiss the indictments in the event of a jury trial. He delibratately prevented me from challenging the sufficency of the indictmes, as due process. Attorneys have the ability to enter for a special appearance to address jurisdiction and lawful process of indictments. Therefore, it was unnecessary for me to have a jury trial, just to be afforded an opportunity to challenge the sufficency of the indictments.

C.) The counsel was ineffective because he told me in the event of a jury trial; "who's gonna believe you, when you have prior convictions for drugs!" He said they may be brought up or may not. Horton v. State 411 SE 2d 233

D.) According to S.C rules for case tracking and bond cards; Defense attorneys shall notify their clients of specfic court dates and shall communicate with the solicitor's office as to when they want their bond carded for court. My counsel did not inform me I was on the trial docket for Dec 2, 2013. I was just transported to court that day and expected to unexpectley select a jury.

E.) on Nov 3, 2013, My attorney along with the Judge informed me that I had no right to a Grand Jury transcript after I made a request. I was told it was a "secertive procedure", and I was not allowed to examine it. ct State v. Gunn 437 SE 2d 75

F.) The counsel was ineffective because he did not tell me or made it known that I would recieve a strike against me upon entering a guilty plea. This is a very serious penalty, as a result my counsel should have made it known that a "strike" was a condition of the plea. "The Defendant must be aware of the crucial elements of the offenses." Hill v. Lockart

G.) I was manipulated by the counsel in accepting an negoiated plea of 5 to 10 years. The Judge I agreed to plea before (Lee) was changed at the very last minute, when I was considering of withdrawing my plea; Mr Chaplin stated, "I just left Judge Benjamin's chambers and she thinks the solicitor is making a big deal over a few pills and drugs!" He also stated that as an conclusion of his meeting in the chambers, I should expect to recieve the minium sentence, because the judge didn't think it was a big deal. I did not get the minium sentence, neither did I get all the credit of time served that he promised me. My own counsel manipulated and cajoled me into an reluctant plea.

State of South Carolina
Court of Appeals

Certificate of Service

I, Vincent J. Rice, hereby certify that I have this date served the Explaination for Appeal to the S.C Court of Appeals via U.S mail to the Clerk of Court to the address as follows:

Clerk of Court
Court of Appeals
1015 Sumter Street
Columbia, S.C 29201

January 30, 2014
Columbia, S.C

Vincent J. Rice

Vincent J. Rice # 316178
Appeallant
Kirkland R&E
41344 Broad River Rd
Columbia, S.C 29210