

NOEL E. GRAY, JR #307590

WATEREE # 274

BROAD RIVER CORR INST

4460 Broad River RD.

Columbia, SC 29210

FEBRUARY 10, 2014

HONORABLE CLERK OF COURT

SC. Court of Appeals

P.O. Box 11629

Columbia, SC 29211

RECEIVED

FEB 18 2014

SC Court of Appeals

Re: Petition for Re-hearing and Re-hearing EN BANC pursuant to
RULE 219 and RULE 221 (8) SCACR.

Dear Honorable Clerk,

Please find the Original Petition with Exhibits enclosed
to be filed into this Honorable Court.

Also is enclosed a copy to be clock stamped and returned
to applicant with Postage Pre Paid envelope for your use.

God Bless you Ma'am

Respectfully Submitted

Noel E. Gray, Jr. #307590

Appellant.

LEGAL MAIL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Aiken County

Doye + A. Early III, Circuit Court Judge

RECEIVED

FEB 18 2014

SC Court of Appeals

THE STATE,

RESPONDENT

v.

NOEL GRAY,

APPELLANT,

APPEAL CASE NO. 2012-213607

PETITION FOR RE-HEARING and RE-HEARING EN BANC
pursuant to RULE 219 and RULE 221 (2) SCACR

NOEL E. GRAY JR #307590
Appellant.

Broad River Corr. Inst.
Waterree # 274
4460 Broad River Rd.
Columbia, SC. 29210

Comes Now INTO COURT Noel E. Gray Jr. # 307590
respectfully moving this Honorable Court to Grant Appellant's
PETITION FOR REHEARING and REHEARING EN BANX pursuant
to RULE 219 and RULE 221(2) for the following reasons:

The Honorable Doyet A. Early III Circuit Court judge
erred in not granting appellants RULE 29(b) S.C.R. Crim.P.
and appointing counsel to aid in preparing the said
Motion for a New Trial in clear violation of the Sixth
Amendment right to counsel see Bell v. Hill, 190 F.3d.1089
(9th Cir. 1999). And Appellate Counsel Robert M. Pachak
Esq. attorney for appellant and the Respondent are all in
error of law pursuant to appellant's RULE 29(b) S.C.R. Crim.P.

September 25, 2012 appellant filed said Rule 29(b)
S.C.R. Crim.P. in the Second Judicial Circuit Court of Aiken
County based on Newly / After Discovered Evidence Claims,
with Material facts to Support action.

Pursuant to a Motion for New Trial Based on After-
Discovered Evidence the evidence was discovered after the
Completion of Appellants PCR see: Simpson v. Moore, 627 -
S.E.2d 701, 708 (S.C. 2006), dated February 2, 2009.

Applicant filed a Motion for New Trial pursuant to
S.C.R. Crim.P. 29(b) with material facts that clearly
showed 1) will change the result if a new Trial was had;
2) could not have been discovered before trial; 3) has -

been discovered since the trial; 4) is material to guilt or innocence; and 5) is not cumulative or impeaching see: State v. Taylor, 508 S.E.2d 870, 879 (S.C. 1998).

Each element was supported with material facts therefore, the court was in error for not granting motion see Hayden v. - State, 299 S.E.2d 854, 855 (S.C. 1983). And the Respondent was in error because there is "no" time limitations on a Motion for New Trial based on after-Discovered Evidence see: State v. Spann, 513 S.E.2d 98, 100 (S.C. 1999); State v. Hinson, 361 S.E.2d 120, 121-22 (S.C. 1987).

But the evidence was filed within reasonable time after discovery see: Town of Hilton Head Island v. Godwin, 634 S.E.2d-59, 61-62 (S.C. Ct. App. 2006).

The motion also was supported by affidavits and relevant evidence. the appellant declares that he did not know of the existence of such evidence at the time of the trial; and that he could not have discovered it by the exercise of due diligence see: State v. De Angelis, 182 S.E.2d-732, 735 (S.C. 1971).

Therefore, the decision should be reversed on appeal because the appellant has shown that Honorable Doyet A. Early III, denial meets the Onerous "abuse of discretion" Standard see: State v. Edens, 250 S.E.2d 116, 118 (S.C. 1978); State v. - Pierce, 207 S.E.2d 414, 417 (S.C. 1974).

The Material Evidence clearly shown the Honorable Court that:

1. Trial Counsel was not experienced to hold a serious offense at bar;

2. Trial Counsel acted as a Second Prosecutor against her own client;

3. Trial Counsel violated her clients Rule 5 Brady disclosure;

4. Trial Counsel withheld two Plea Agreements in which one was "Non-Violent";

5. Appellants 2004-GS-02-1334 charge was not a Most-serious offense pursuant to S.C. Code Ann. § 17-25-45(a) Recidivist Statute;

6. Trial Counsel violated her own clients Sixth Amendment Right to a Fast and Speedy Trial pursuant to appellants Federal IADA Contract see: State v Holbrook, 274 S.C. 4, - 260 S.E.2d 181 (1979);

7. Trial Counsel "lied" to the Honorable Regional L. Lloyd Chief Administrative Judge to gain an Illegal and UnConstitutional Continuance.

8. Trial Counsel "lied" to the Honorable Doyce A. Early III at initial PCR dated February 2, 2009. regarding Federal IADA Contract;

9. Trial Counsel "failed" to Instruct Jury of a lesser-

included offense charge to the jury;

10. Trial Counsel failed to object to Prosecutorial Misconduct by allowing "Linda Brown" a State witness to commit an unlawful act of perjury by lying for the State to gain tactical advantage pursuant to Giglio v. U.S., 92 S.C. 763 (1972)

Appellate Counsel is ineffective for "abandoning" relevant arguments raised by appellant in his Rule 29(b) Motion, and the evidence clearly showed that Trial Counsel did not act as an active advocate by her harmful errors of prejudicing her own Clients Procedural Due Process.

Fundamental fairness entitles indigent appellants to an "adequate opportunity to present their claims fairly within the adversary system see: Ake v. Oklahoma, 470 U.S. 68, 77 (1985) in which appellate Counsel Robert M. Pecharic Esq. and the Respondent are denying.

Trial Counsel's failure to object to the LWOP Sentence to properly preserve the Claims for Appellate Review, the appellant's Sentence and Conviction was obtained in violation of the Sixth Amendment Confrontation Clause see: Atkins v. Virginia, 536 U.S. 304 (2002).

Please take Judicial notice to appellants SC Code - Ann. § 17-25-45 (a) Recidivist Statute Sentence enhancement to Life without the Possibility of parole. Infra.

Notwithstanding any other provisions by law, any person who has three convictions under the laws of this State, any other State, or the United States for the crimes of or conviction of (1) Voluntary Man Slaughter; (2) CSC 1st. degree; (3) Armed Robbery; (4) burglary; (5) Safe Cracking; (6) Assault and Battery with intent to kill shall upon such third conviction in this State, be sentenced to life in prison.

Appellant's 2004-65-02-1334 charge is not equivalent to a "CSC 1st" because Sc. Code Ann. § 16-3-655 is a most-serious offense "except" where evidence is presented at a criminal proceeding and the Court, after a conviction makes a specific finding on record that the conviction was obtained for this offense resulted from consensual sexual conduct where the victim was younger than the actor see: State v. Warren, 330 S.C. 584, 500 S.E.2d 128 (S.C. 1998); Reversed Cert. Granted, - 341 S.C. 349, 534 S.E.2d 687.

Appellate Counsel Robert M. Archak Esq. is required to engage in a conscientious investigation of all possible grounds of Appeal and brief all arguable issues before the Honorable Court see: Anders v. California, 386 U.S. 738 (1967).

The Constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to that of amicus Curiae.

Also the evidence provided clearly shows that the Court did not have jurisdiction to sentence and or convict the appellant, because Trial Counsel violated procedural Due Process of the appellant and filed an illegal continuance against her own clients Federal IADA Contract in which violated his Sixth Amendment to a Fast and Speedy Trial. see: State v. Holbrook, 274 S.C. 4, 260 S.E.2d 181 (1979); Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 987, 900 (1989); Lake v. Realer Const. Co. 330 S.C. 242, 488 S.E.2d 650 (1995); State v. Funderburk, 191 S.E.2d 520 (S.C. 1972); State v. Sowell, 85 S.C. 278, 67 S.E. 316 (1910); Lillard v. Searson, 170 S.C. 304 S.E. 499 (1933).

And the New Evidence from the Honorable Clerk of Court dated April 8, 2013 and the letters dated December 20, 2012; April 8, 2013; April 26, 2013; May 13, 2013; August 12, 2013; will support this Petition For REHEARING and REHEARING EN BANC;

It is the appellants Constitutional right to have all his issues preserved for Appellate Review,

Therefore the appellant respectfully moves this Honorable Court to Safeguard him from Ineffective Assistance of Appellate Counsel and Grant appellants Petition for Re-Hearing and Re-Hearing EN BANC pursuant to Rule 219 and Rule 221(a).

S.C. A.C.R. TO preserve all his issues for Appellant Review.

Respectfully Submitted.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

FEB 18 2014

Appeal from Aiken County

Doyet A. Early, III Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

Noel GRAY,

Appellant.

CERTIFICATE OF SERVICE

The undersigned appellant hereby certifies that a true copy of the Petition For Re-Hearing and Re-Hearing EN BANC has been served upon Salley W. Elliott, Esq. at Rembert Dennis Building, 1000 Assembly St. Room 519, Columbia, SC 29201 this 10th day of February 2014, with additional exhibits enclosed.

Noel E. Gray Jr. #307590

Noel E. Gray Jr.

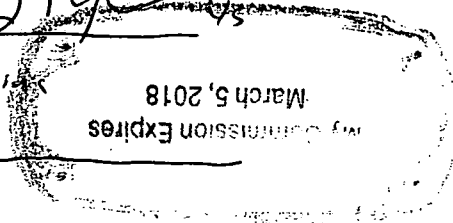
SUBSCRIBED AND SWORN TO before me

this 10th day of February, 2014 Appellant

Susan H. Dye

Notary Public for South Carolina

My Commission Expires: _____



2004-65-02-01333 (F 718991)
2004-65-02-01334 (F 718990)

April 6, 2013

Dear Honorable Clerk,

Please send me the name of the Court Reporter and docket Number to the Continuance that was filed in General Sessions Court by the Honorable Reginald I. Lloyd Chief Administrative Judge on October 29, 2004

And who has the Record of Transcript for that Open Court hearing? and what time was that hearing?

Respectfully Requested.

Noel E Gray Jr. #302540

Noel E Gray Jr.

Murray # 212-B

Broad River Corv. Inst.

4460 Broad River Rd.

Columbia, SC. 29210

SWORN AND SUBSCRIBED BEFORE ME

this 8th day of April, 2013

Deussen H. Fryer

Notary Public for South Carolina

My commission Expires: _____

CC/FILE

* See attached Response
COW

FILED April 11 2013

W. Godard
S.C. C.P. & S.
Christina Z. Wentz / COW

(EXHIBIT A-1)



**Aiken County Clerk of Court
Liz Godard**

**P.O. Box 583
Aiken, SC 29802**

**(803) 642-1757
General Sessions Division**

April 8, 2013

Re: 2004-GS-02-01333 (F718991)
2004-GS-02-01334 (F718990)

Mr. Gray,

I have received your request. I am sending you a copy of the Continuance that you are referring to. I see that it was signed by the judge on 29th day of October, 2004. It was filed in our office on November 8, 2004. I don't know if the continuance was heard before the court in the courtroom or just presented to the Judge in chambers. I pulled the schedule off of the Court Administration Website and see that Judge Lloyd was in Aiken for that scheduled term of court. I am sending you a copy of that along with instructions for ordering transcripts.

Thank you,

Cheryl S. Westall
Chief Deputy Clerk
Criminal Division

(EXHIBIT A-2)

Trial List for Weeks of October 18 & 25

Defendant	Charge	Attorney	Solicitor
Allen, Charles	Shoplifting	L Danielson	JWW
Battè, Damian	Dist MJ (6/4/04)	K Brown	JWW
Bentley, Kathleen	CSC	L Danielson	BRB
Brown, Leon	CSC w/Minor	K Brown	BRB
Busco, Santiago	Lewd Act on Child	M Chesser	EKC
Cant, Tabaria	ABHAN	K Brown	BRB
Colden, Cedric	Murder, Kidnapx2; Armed Robb X2	R Simmons	JWW
Corley, Michael	CSC 3 rd (03-0236)	M Puetz	BRB
Cox, John	Poss Cocaine	D Mauldin	EKC
Denry, Janice	Shoplifting	B Goodman	BRB
Eller, Leslie	Obt. Subs by Fraud	L Danielson	JWW
Garrett, Willie	Poss CC	B Harte	JWW
Gillian, McKenzie	PWID CC	L Danielson	JWW
Glover, Frances	Dist Hydrocodone; Prox; Poss Hydrocodone; Poss Methadone	J Whittle	JWW
Gray, Noel	CSC w/Minor	K Brown	EKC
Hearn, Tabitha	Mfg MJ	J Harte	JWW
Hickson, Javier	Unl Poss Firearm <21	B Goodman	BRB
Jackson, Christopher	Dist MJ	B Harte	JWW
Johnson, Merle	Dist Cocaine	L Danielson	JWW
Jordan, Johann	PWID MJ; Prox; ETSBLS	G Walters	JWW
Langford, Demarco	Drugs	M Chesser	BRB
Langford, Dwayne	Drugs	R. Simmons	BRB
Lawrence, Elliot	Poss CC	L Danielson	JWW
Lucas, Loyce	Acc After Fact - Felony	K Brown	BRB
McCain, Alexander	Poss Cocaine	L Danielson	BRB
McMahan, Christopher	Bug 2 nd x2; GL	B Sussman	EKC
Moxley, Timothy	DU	B Harte	EKC
Offenbaker, Galen	Mfg MJ	J Harte	JWW
Paschal, Diane	P&P	J Whittle	BRB

(EXHIBIT A-3)

Trial List for Weeks of October 18 & 25

Perrin, Johnny	Dist CC; Pox; CAP	C Siegler	JWW
Pilot, Leon	Dist Meth	T Williams	JWW
Robinson, Daniel	Dist MJ; Pox	none	JWW
Ross, Cedric	Drugs	D Mauldin	BRB
Smith, Robin	Dist CC; Pox	A Anderson	JWW
Turner, David	CSC w/Mirror x3	T Woodruff	BRB
Vaughn, Betty	RA(B); Throwing Bodily Fluids	E Hatcher	EKC
Wolf, Courtney	PWID MJ	K Brown	JWW

(EXHIBIT A-4)

Circuit	10/4/2004	10/11/2004	10/18/2004	10/25/2004
2	Common Pleas Aiken Lloyd, Reginald <u>SIGWALD</u> 4, 5, 6, 7 <u>SHEPPARD</u> 8	General Sessions Bamberg Nicholson, J. <u>SIGWALD</u>	General Sessions Aiken Keesley, William <u>SIGWALD</u> 18 <u>SHEPPARD</u> 19 <u>SIGWALD</u> 20, 21, 22 <u>DAVENPORT</u> General Sessions 19 Barnwell Buckner, Perry <u>SIGWALD</u> 19 General Sessions 21 Bamberg Keesley, William <u>SIGWALD</u> 21	Common Pleas Barnwell Early, Doyet <u>SIGWALD</u> 25, 26, 27, 28 <u>NO CR NEEDED</u> 29 General Sessions Aiken Lloyd, Reginald <u>THOMAS</u> <u>DAVENPORT</u> General Sessions Aiken / Bamberg / Barnwell Early, Doyet <u>SIGWALD</u> 25, 26, 27, 28 <u>NO CR NEEDED</u> 29

(EXHIBIT A-5)

OCTOBER TERM OF COURT

18th - 29th

	S	M	T	W	T	F	S	
						1	2	
	3	4	5	6	7	8	9	
	10	11	12	13	14	15	16	
	17	18	19	20	21	22	23	
	24	25	26	27	28	29	30	
	31							

(EXHIBIT A-6)

EXHIBITS AS FOLLOWS:

- A) Official Complaint
- B) News Paper Article
- C) NOTICE of Intent to Appeal
- D) Official Letter Head Denied motion's for
29(b) Rule of Civ. Proc. for South Carolina
- E) Official Judgement

DEC 20 2012

Noel Gray #307590
Murray #212-B
Broad River Conv Inst.
4460 Broad River Rd.
Columbia, S.C. 29210

December 20, 2012

Dear Honorable Clerk / Appellate Defense

Please find enclosed a true copy of defendant's / Petitioner's Official Complaint against the Honorable Doyet A. Early III.

Procedural History will clearly show that the Honorable Early's denial of defendant's Rule 29(b) Motion for new Trial and Appointment of Counsel was Fundamentally Unfair; Bias and Abuse of Discretion and law and as well as prejudice against an indigent defendant.

Pursuant to Rule 29(b) of the S.C. R. Crim. P. I met the burden of proof through Material facts and clearly proven that the defendant in this action lost all State and Federal Procedures because of Trial Counsel Kelly P. Brown Esq.; Eleanore Duff Cleary; Bradley L. Boni and Wanda H. Carter. Because of State v. Rice; 375 S.C. 302, 652 S.E. 2d 409 (Ct. App. 2007) Because Trial Counsel failed to preserve any and all Constitutional Violations for Appellate Review.

Also, the defendant's 1st PCR was fundamentally unfair because Counsel failed to provide adequate Representation to preserve all his clients Issues for Federal Review pursuant to Strickland v. Washington, (1984); State v. Spreitz, 202 Ariz. 1, 3, 39 P.3d 525, 527 (2002); S.C. Rule Civ. Proc. 71.1(d) (2011); Anders v. California (1967); Brady v. Maryland, (1963); Pennsylvania v. Finley, (1987);

~~EXHIBIT B~~

108

DEC 20 2012

and last, the cause for Procedural Default is caused by Appointed State Counsel Bradley L. Boni Esq. who failed to Amend Defendants Rule 59(e) of South Carolina's Rules of Court Procedure according to Defendants request pursuant to Rule 71.1(d) (2011) Martinez v. Ryan (2012) If Counsel in PCR dated February 2, 2009 filed for Discovery according to Rule 5 Brady v. Maryland (1963) and researched Prior Conviction In context with the Direct Appeals Court and Defendants Federal Interstate Agreement on Detainers Act Contract and the Illegal Order of Continuance filed by Trial Counsel Kelly P. Brown Esq. October 29, 2004 All the defendants Issues would not have been procedurally Defaulted and his issues in light of his Pro-se Briefs filed in Anders and Johnson Petitions would have been successful and the defendant would not have been Sentenced to LWOP pursuant to S.C. Code Ann. § 17-25-45 Recidivist Statute. and his counsel would have uncovered the two (2) Plea Agreements that were found in Newly discovered evidence package dated October 12, 2011. And Prosecutorial Misconduct Package Pursuant to Gioglio v. U.S. S.Ct. (1972) in Regards to Linda Browns Unconstitutional testimony that unlawfully Convicted defendant in clear violation of defendants 6th and 14th amendments of the United States Constitution. And a successive and unlawful Sentence of LWOP in violation of the 8th Amendment to Cruel and Unusual Punishment. If I need to send you any thing regarding this case please let me know. I'm a layman of the law.

sworn and Subscribed before me
 this 20th day of December, 2012
 X Susan H. Frye

Respectfully Submitted
Noel Gray #307590
Noel Gray #307590

Notary Public for South Carolina My Commission Expires
 my commission Expires! March 5, 2018
 cc/FILE.

~~EXHIBIT 15~~

109

April 8, 2013

Dear Mr. Pachak,

Hello Sir. My name is Noel Gray Appeal NO: 2012-213607. Sir, the pro-se brief I sent you is all of my issues raised in my Rule 29(b) Motion For New Trial.

Also I presented Material Facts to the Honorable to support the Motion. I sent you that brief so in case you file an Anders Brief, You will have that brief before your filing to preserve all these vital issues " such as follows " Motion's for Directed Verdict and New Trial that was preserved for Appellate Review. That Prior Appellate Attorney Eleanore Duffy Cleary failed to address a reversible Issue alone; also that Giglio v. U.S. where the judge heard those people admit to lying and Trial Counsel's failure to object to that Unlawful LWOP Sentence. The Honorable is supposed to protect me from prosecutorial Misconduct as well as my trial Counsel. But failed to do so. The Honorable did in fact violate my Procedural Due Process' See Dr. Benedetto v. Honorable Judge and Linda Brown clear violation of the 6th and 14th Amendments to the United States Constitution. Petitioner should be Granted a New Trial Thank you Sir for your time. God Bless You.

Respectfully Submitted.

Noel Gray

#307590

Sworn and Subscribed before me this 8th day of April, 2013

B.R.C.I. Murray #212B

x Jordan H. Drye

Notary Public for South Carolina

My Commission Expires: March 2018

~~EXHIBIT 16~~

PS. The Appellant respectfully Requests for a copy of his Court transcripts to aid in future proceedings. Thank you, sir.

CC/FILE



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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

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

April 26, 2013

Mr. Noel Gray, #307590
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Your case

Dear Mr. Gray:

The appeal of the denial of your Rule 29(b) motion is limited to the issue of whether trial counsel failed to convey two plea agreement offers to you. The January 31 – February 2, 2005, trial transcripts are not relevant to that issue. You have already been provided those transcripts in the past. This office can not afford to send duplicate transcripts. Neither can we afford to duplicate the other documents you request. Our office does not make Rule 5 on Brady discovery requests as we just handle the appeal.

Sincerely,

Robert M. Pachak
Appellate Defender

RMP/pcm

~~CONFIDENTIAL~~

NOEL E. GRAY, JR #307590
MURRAY # 212 B
BROAD RIVER CORP. INST.
4460 BROAD RIVER RD.
COLUMBIA, SC. 29210

MAY 13, 2013

MR. ROBERT M. PACHAK ESQ.
DIVISION OF APPELLATE DEFENSE
P.O. BOX 11589
COLUMBIA, SC. 29211-1589

Re: OTHER VITAL ISSUES PRESERVED

Dear Mr. Pachak,

Hello Sir, I want to thank you sir for what you are doing in my case. But I have a Constitutional question to ask.

In my Rule 29(b) motion I filed other-vital issues

Infra:

Prosecutorial Misconduct pursuant to Giglio v. U.S. ;
Vandetta ; Rogers violations ; Brady violations ; Trial Court
Abuse of Discretion of facts and laws ; Unlawful denial
of Directed Verdict Motion's that were preserved for
Appellate Review etc.

~~EXHIBIT A-18~~

K. R.

These issues raised were relevant to the facts and were supported by and through material facts.

Sir, will these issues be preserved in this Hearing with Appointed Counsel?

Thank you Sir

Respectfully Submitted

Noel E. Gray Jr. #307540

Noel E. Gray Jr. #307550

Murray #2128

Sworn and Subscribed before me

this 13 day of May, 2013

by Eugene K...

Notary Public for South Carolina

My Commission Expires: April 4, 2016

~~EXHIBIT A 19~~

August 18, 2013

Dear Honorable Clerk, / Attorney General

Please find enclosed a true copy of Correspondence to Mr. Robert M. Perchak Esq. / ~~Appellate Affidavit Rule 24(b)~~
The petitioner respectfully refutes Counsel's failure to raise All valid issues that were newly / after discovered and are relevant to the S.C. R. Crim. P. Rule 24(b) Motion for a New Trial, claims fall under the "discovery Rule" Coats v. State (SC 2003)

This Honorable Court has held that procedures prescribed by Anders v. California, 386 U.S. 738 (1967). "Appellate Counsel (~~is required~~) is required to engage in a conscientious investigation of the possible grounds of Appeal and brief arguable issues before Appellate Counsel files his/her briefs in question.

The Constitutional requirement of Substantial equality and fair Process can only be attained when Counsel acts in the role of an active advocate in behalf of his client, as opposed to that of Amicus Curiae.

The Petitioner is entitled to his one fair bite of the apple Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582 (2002).

~~Also please send a clock stamped copy back to the petitioner in the self-addressed and stamped envelope that is enclosed for your convenience.~~

God Bless You!

Respectfully Submitted

Noel E. Gray, Jr.
#307590

(H)

~~_____~~

NOEL E. GRAY JR #307590
MURRAY 212 B
BROAD RIVER CORR. INST.
4460 BROAD RIVER RD.
COLUMBIA, SC. 29210

AUGUST 12, 2013

MR. ROBERT M. PACHAK, ESQ.
APPELLANT DEFENDER
P.O. BOX 11589
COLUMBIA, SC. 29211-1589

BRIEF FILING DATE:
APRIL 12, 2013

RE: APPELLANT COUNSEL'S CORRIGENDUM; AND TO INCORPORATE ALL APPELLANTS
ISSUES RAISED IN HIS S.C.R. CRIM. P. RULE 29(b) AFTER-DISCOVERED EVIDENCE
CLAIMS THAT ARE RELEVANT TO REVERSAL OF SENTENCE AND CONVICTION.

Mr. Pachak,

Sir I would like to thank you for what you are doing
in my case. But, I have a delima in your representation.

The South Carolina State Supreme Court held that the
procedures prescribed by Anders v. California, 386 U.S. 738 (1967)
applied in PCR Matters see Johson v. State, 294 S.C. 310, 364 S.C. 2d-
201 (1998), as well.

Sir, you are required to engage in a conscientious
investigation on all possible grounds of my appeal and brief
all arguable issues in my brief before trying to withdraw.
see Anders, 386 U.S. at 774.

The U.S. Supreme Court held: ("the Constitutional requirement of substantial equality and fair process can only be attained where you act in the role of an active advocate in my behalf, as opposed to that of amicus curiae "Id. see Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) ("The appropriate scope of review of this Court is that "any evidence" of probative value is sufficient to uphold the PCR Judge's findings").

Simply Stated, Appellants are entitled to his one fair bite of the apple see Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d-581, 582 (2002).

Sir, your failure to argue all of my relevant issues prejudiced me from having all my issues presented for Appellate review. I am entitled to a full and fair opportunity to present valid claims in one PCR Application Odum v. State, 373 S.C. 256, 261; 523 S.E.2d 753, 755 (1999).

Also, pursuant to the rules and statutes governing PCR proceedings, I am entitled to a full adjudication on the merits of PCR Action 2013-CP-02-62776 filed December 9, 2011, because this action was not successive because the issues of:

- 1) Trial Counsel's Trial Court inexperienced to hold Jury Trial;
- 2) T. C. "Failing to conduct Investigation";
- 3) T. C. lying to PCR Judge February 2, 2009;
- 4) T. C. violating her own Client's Federal IADA Contract ;i.e. illegal continuance filed by Trial Counsel;
- 5) Failure to convey (2) plea Agreements;
- 6) Failure to impeach State witnesses for Perjury;
- 7) Prosecutorial Misconduct Biggio v. U.S. Perjury;

8) Ineffective Assistance of PCR Counsel;

9) Ineffective assistance of PCR Counsel on Collateral Appeal; Martinez v. Ryan (2012); Bailey v. State (2011).

10) Unlawful enhancement of Sentence (WOP)

These issues were not addressed nor ruled upon in Appellant's previous PCR, because Appellant's first PCR action occurred prior to December 9, 2011, thus, these issues constitute new grounds therein removing the present collateral action from classification of a successive action see Alice v. State, 305 S.C. 488, 409 S.E.2d 392 (1991).

Also pursuant to Martinez v. Ryan, 132 S.Ct. 1304 (2012)

Justice Kennedy held that:

1) inadequate assistance of counsel at initial-review - Collateral Proceedings may establish cause for a prisoner's Procedural default of a claim of ineffective Assistance of Trial Counsel;

2) Anti-terrorism and Effective Death Penalty Act (AEDPA) did not bar petitioner/Appellant from using ineffectiveness of his Post-Conviction Relief Attorney to establish "Cause" for his Procedural default; and: Also Counts for Direct Appeals as well.

3) A remand was required to determine whether Appellant's attorney in his first State Collateral proceeding was ineffective, whether underlying ineffective Assistance of Trial Counsel claim was substantial, and whether Appellant was prejudiced (Reverse and Remand).

Also material facts arrived out of a After-Discovered Motion for Production of Documents and things from Trial Counsel dated October 12, 2011.

~~ATD~~

K-4

If you would look back in Appellants procedural history See Anderson Johnson Briefs you will see that Appellants case has never been affirmed but ruled as NO Precedential Value and because the WOP issue was not objected to see State v. Rice, 375 S.C. 302, 652 S.E.2d 409 (Ct. App. 2007) Trial Counsel "erred" failing to preserve issue for Appellate review violated due process at sentencing under the Sixth and Fourteenth Amendments to the United States Constitution and Article 1 § 14 of the S.C. State Constitution these issues are without merit because of Ineffective Assistance of Trial Counsel. Even though the Appellant has been filing his own Pro-Se Briefs to show cause.

For a long time, I always believed that the State violated my I.A.O.A Contract from Federal Prison, but at PLK I know now it was my own Trial Counsel she became a friend to the State, and lied to the PR Judge.

Also that Giglio v. U.S. after-discovered evidence was relevant, because to falsely convict someone on perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the Judge and Jurys judgement see Simpson v. Moore, 627 S.E.2d - 701 S.C. (2006); Giglio v. U.S., 92 S.Ct. 763 (1972); State v. Whisonant, 335 S.C. 148, 515 S.E.2d 768 (Ct. App. 1999); State v. Schmidt, 342 S.C. 2d 401 (1986) See Linda Browns Testimony "Opening remarks" Closing - Arguments and Mr. Browns Conversation with the Trial Court.

This alone was prejudicial extraneous evidence that influenced the Jury, see U.S. v. Lentz, 383 F.3d 191, 221 (4th Cir. 2004). and a New trial is required. Also made Trial Court offended.

~~SECRET~~

The Respondents were in error of law on the limitations issue. This S.C.R. Crim. P. Rule 29(b) motions places NO time limitations on a Motion for New Trial based on After-Discovered Evidence see State v. Spann, 513 S.E.2d 98, 100 (S.C. 1999); - State v. Hinson, 361 S.E.2d 120, 121-22 (S.C. 1987).

And these issues fall under the Discovery Rule see - Coats v. State, 575 S.C.2d 557 (S.C. 2003).

Therefore, the Appellant would respectfully move his appointed Appellate Counsel to Amend all his Relevant issues to the record pursuant to Rule 29(b) S.C.R. Crim. P. because ~~there is no~~ there is no Statute of Limitations to a Rule 29(b) and Appellant is entitled to a New Trial based on Newly-After-Discovered evidence supported by and through material facts. Also under Rule 401 S.C.R.E. Article IV State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991); - State v. Schmidt, 288 S.C. 301, 342 S.E.2d 401 (1986) the Giglio Prosecutorial Misconduct Issue See Linda Brown is also relevant and requires reversal of conviction citing Jackson v. Virginia, (1979). All of Appellant's issues are relevant with material facts to support action.

EXHIBITS ~~XXXXXXXXXX~~
Dec. 20, 2012;
April 8, 2013;
April 26, 2013;
May 13, 2013

Respectfully Submitted
Noel E. Gray Jr.
Appellant.

Columbia, SC.
S.C. 8-12-13

Also citing Bailey v. State, 392 -
S.C. 442, 709 S.E.2d 671 (2011) Strickland
Appellants 6th Amend right to effective
Asst. of Appellate Counsel on initial Appeal.
See Martinez v. Ryan, Supra.

CERTIFICATE OF SERVICE

The petitioner hereby certifies that a True Copy of petitioner's letter to include all relevant issues has been placed in the U.S. Mail postage pre-paid and mailed to the following parties: ~~with Attached Exhibits A-F-2; and Personal Affidavit Supporting Motion for 29(b) Rule S.C.R. Crim. P.~~

1. Honorable Clerk of Court

SC. Court of Appeals

P.O. Box 11629

Columbia, SC, 29211

2. S.C. Commission of Appellate Defense

MR. Robert W. Pechar

P.O. Box 11589

Columbia, SC, 29211-1589

3. MS. Selley Cr. Elliot

Senior Asst. Deputy Atty. General.

P.O. Box 11549

Columbia, SC, 29211

ee EXHIBITS ENCLOSED TO SUPPORT
CORRESPONDENCE TO ADDRESS
ALL ISSUES 59
Also, there is NO limitations
on Rule 29(b).

Shore and subscribed before me

this 14th day of August, 2013

Andrew A. Frye 45

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires

My Commission Expires

March 5, 2018

Respectfully Submitted

Noel E. Gray Jr. #307590

Noel E. Gray Jr.

Petitioner