STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY

2013-CP-21-874

Honorable Michael G. Nettles

Jimmy D. Meggs Jr.,

Appellant,

-vs-

State of South Carolina,

Respondent.

EXPLANATION BRIEF

The State has created a roadblock for the Applicant by their non response and now trying to block the Applicant from presenting his newly discovered claim. The Prison Law Library was updated on March, 4 2013 to include the cases mentioned in the 2013 action.

The Courts 12 (b) (8) motion was improper in that it does involve the "same parties" However, it does not involve the "same issue". Therefore the Order of Dismissal pursuant to SCRCP Rule 12 (b) (8) was improper. Futher, the State nor the Court gave the Applicant an opportunity to respond to the proposed dismissal prior to making it's ruling. Futher, the fraud perpetrated by the state that the 2009 PCR being pending is an attempt to not allow the Applicant to have an adjudication on the newly discovered claim's discovered as a results of the Institutional Law Library being updated on March, 4 2013. As such, In Re Redmond 678 S.E.2d. 409 was not decided until June, 1 2009, also, the

decisions mentioned in the 2013 were not discoverable until such updates were made to allow the Applicant to be able to discover the "factual predicate" of his claims compare Easterwood v. Champion 213 F.3d. 1321.

The Applicant was represented by Kenard Redmond at trial on August 9-12 2001, Subsequently in December of 2007, The Applicant had his first PCR hearing, which he claimed that Counsel Redmond was Ineffective for not investigating and ensuring that the State met their burden of proof as it relates to the elements of S.C. Code Ann. § 16-3-810. At the PCR, Counsel Redmond said that he knew of no case law to determine the Applicability of this State Statute (§16-3-810). In all, the Court rule that Counsel was acting within professional norms required by Counsel in criminal matter. However, it was discovered in 2013 as a results of the March, 4 2013 update in the prison Law Library that Counsel sometime after the PCR Hearing (June, 1 2009) that Counsel Redmond conceded that he was ineffective and that he did not provide Representation [Respondent stipulated that, by his misconduct, he violated the following provisions of the rules of professional conduct, Rule 407, SCACR Rule 1.1, Futher the Conduct that counsel Redmond admitted to fell between the time he represented the Applicant (1998-2005). Futher, Redmond failed to respond to Disciplinary Counsel as required by Rules. As a point of clarity, The Applicant could not have had this case and been privy to these cases until June, 1 2009. The Applicant was tried and convicted on August, 11 2001 in Florence County and the Applicant could not have known or had the benefit of introducing the In Re Redmond 678 S.E.2d. 409, until well after his PCR. It is the Applicant's position that had this been considered in light of the lack of case law to determine the Applicability of § 16-3-810, and the Statutory language counsel was Constitutionally ineffective for not so raising this objection. In light of the other Ineffectiveness, that Counsel Redmond Admitted to being Ineffective, the PCR Court would have viewed Counsels failures in a different light.

Had Counsel Conducted an Investigation both factual and legal he would have reasonable discovered the 1991 Att Gen Opinion. Futher, The Allegations before trial did not change at trial as the alleged victims testimony was that I though coercion caused two minors to commit a sexual act upon each other, while this testimony was that one pulled a T-Shirt over the others head thereby not allowing anyone to see this act. Including supposingly the Applicant. South Carolina Code Ann. § 16-3-810 Specifically states:

§16-3-810 ENGAGING CHILD FOR SEXUAL PERFORMANCE, PENALTY:

(a) It is unlawful for any person to employ, authorize or induce a child younger than eighteen years of age to engage in a sexual performance. It is unlawful for a parent or Legal Guardian or Custodian of a child younger than eighteen years of age to consent to the participation by a child in a sexual performance.

(b) Any person violating the provisions of subsection (a) of this section is guilty of Criminal Sexual Conduct of the second degree and upon conviction shall be punished as provided in § 16-3-653.

Where the Attorney General of South Carolina said in his 1991 Attorney General's opinion that (1991 WL 474776) Another Circumstance of the Criminal Offense of Criminal Sexual Conduct in the Second Degree is set forth in S.C. Code Ann. § 16-3-810 involving Engaging a Child (under the age of 18) for Sexual Performance. Similarly, it is Criminal Sexual Conduct in the third degree to produce, direct or promote sexual performance by a child pursuant to section § 16-3-820, But see Section § 16-15-395, 405 (First and second degree Sexual Exploitation of a minor). There is a reasonable probability that is a probability that had Counsel Investigated he would have reasonably known of this Published 1991 Attorney General's Opinion and would have required the same Attorney General's Office to 1) Re-Submit the

Indictment to the grand jury or Objected to the sufficientcy of the Indictment to the Grand Jury with the reference to (§16-3-653 Criminal Sexual Conduct Second Degree). The Grand Jury would have reasonable not returned a True Bill on this Charge. 2) Reasonable Counsel would have Objected and raised in his Directed Verdict, The States Failure to Allege What would constitute § 16-3-653 as required by Law. Had such Objections been made the Appeals Court would have had an Opportunity to review and determine the Applicability and/or Constitutionality of § 16-3-810.

Where during deliberations, the jury sent a note to the Court regarding what constituted that (§ 16-3-810) Offense, coupled with the fact of absolutely no case law concerning this untested Criminal Statute. This Error was compounded because even if the Court ruled against the Appellant he would have had an opportunity to raise this Novel Issue on Direct Appeal.

There is a reasonable probability that had Counsel raised the proper Objections and/or Direct Verdict at the Conclusion of the States case in chief and at the conclusion of trial. The Court would have ruled that the State failed to put forth any evidence that would constitute the Legislative Intent of § 16-3-810 , or, had the Trial Court ruled against the Defense Motion. The Issue would have been preserved for Direct Review. Where the South Carolina Attorney General Opinion (1991 WL 474776 states that [Another example of Criminal Sexual Conduct Second Degree is § 16-3-810]. In 1991, The Attorney General Richard E. McLawhorn gave his (A.G.'s) Opinion in which he says another circumstance of CSC 2nd is set forth in S.C. Code Ann. § 16-3-810. Considering it was this same S.C. Attorney General's Office that prosecuted the Appellant. There is more than a reasonable probability that the outcome would have been different.

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CERTIFICATE OF SERVICE

I Certify that I have served my Notice of Appeal, Proof of Service and Explanation on the Respondent Counsel of record [South Carolina Attorney General's Office, Hon. Alan Wilson, Attorney General, Post Office Box 11549, Columbia, SC 29211 by depositing it in the United States Mail, Postage prepaid and addressed to the following.

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THIS 21st DAY OF Feb., 2014.

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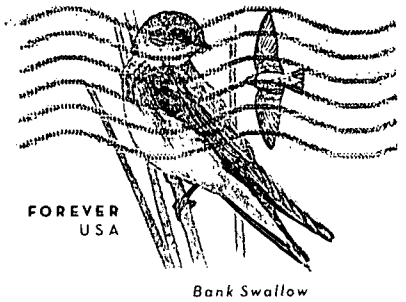

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