

①

Dear,

Clerk

please

clock, stamp, and file

this with my other pro se Briefs and
Contact me back with Notice of Reviewing
the Issues I've presented please.

If I can receive copies of all Issues I've
presented I'd appreciate it

RECEIVED

FEB 28 2014

S.C. SUPREME COURT

Shakeen Cabbagestalk
(without prejudice ucc1-207)

v.

State of South Carolina

Supplemental for
Writ of Certiorari

Appellate Case No. 2012-212579
pro se

RECEIVED

FEB 28 2014

S.C. SUPREME COURT

Issues presented to Courts

- ① Judge King determined a sentence at the low end of range wasn't appropriate due to: (1) I didn't provide police with names of those who allegedly participated in an alleged crime and (2) petitioner showed no remorse. (This isn't findings of facts or conclusions of law or fair and impartiality. ① I was never indicted so I may exercise my right not to be held accountable unless on presentment by a grand jury indictment.
- ② How can someone show remorse for an alleged allegation not for them or they don't know about (this was suppose to be an mistrial and either present evidence for a new indictment or dismiss charges.
- ③ The trial Judge King Erred in Amending Any Indictment: No judge may or solicitor amend any indictment this violates one due-process rights to be only held accountable for an indictment by a grand jury that's legally qualified. For any judge or solicitor to act as the grand jury is out of their jurisdiction and even though the assault and battery with intent to kill indictment was dismissed/nol prosco No judge or solicitor can amend it at all this violates (one) constitutional rights clearly established as well due process right if a judge or prosecutor is allowed to do this what's the purpose of a grand jury? Appeals court erred overlooking this and trial courts and PCR courts.
- ④ A PCR judge is to address each and every issue and rule on it according to facts of law and conclusions of law: Each issue with the PCR wasn't addressed by Judge J. Baxley, the PCR application has nearly 30 issues and motions filed that wasn't addressed in Judge Baxley's order he construed and constructed to his liking's not addressing issues I presented with facts and conclusions of laws. I filed a Rule 59(e) it wasn't considered (see rule 59(e) attached enclosed) Appellant attorney received and ignored; it denied to file Ms. Cannon of my PCR when I appealed the Appeals Court decision.
- ⑤ NCIC Stated (James Cabbagestalk) Volume 1 of 2 pg. 357:
Shakeen Cabbagestalk isn't (James Cabbagestalk) it's not a positive match. So what did police take to the grand jury? What evidence they presented to get an indictment from the grand jury? Did the grand jury converse off false information? How did police come to pick up (Shakeen Cabbagestalk) but got warrants for James Cabbagestalk?
- ⑥ James Cabbagestalk Testified at PCR Courts: "James Cabbagestalk" testified at PCR courts (Shakeen Cabbagestalk) isn't him and never been known by that name.
- ⑦ Hands of one the hands of all: How can I be charged for something not for me and held accountable under the hands of one is the hands of all and the state only have one person? It's police job to prove this beyond reasonable doubt and this wasn't proved "only a testimony by an guy who say I was 'wooly' then 'James' and I'm neither one as the courts found out at trial Aug. 27th + 28th 2007.

Issues presented to courts

- ① In Adequate Transcripts: The transcripts the court reporters present aren't adequate and true (It's Constructed and Constructed to fit the States Case, The court reporters messed up nearly all transcript I contacted m.s. Desiree R. Allen about it and filed a complaint still no help. This damaged my strategies to defend myself.
- ② In Consistent testimony of Alleged Victim: The alleged victim told police the person had no gun (2) times he noticed in the police report which got (2) different years on it "1-2-06" and "1-1-07". At trial the alleged victim testified other than what he told police Mr. Barfield which is (Inconsistent testimony) and damages his credibility.
- ③ The state presented misleading information for James Cabbagestalk to the grand jury which got Shaheen Cabbagestalk falsely imprisoned.
- ④ Identification: is a mis identification and this case should be over turned I'm Not (James Cabbagestalk)
- ⑤ Newly Discovered Evidence: I have presented to the courts a statement from Burk H. Lovette Dated 9-11-11 which contradicts what the solicitor presented as a lie to the trial courts, and his testimony Mr. Burk H. Lovette is asked be considered. Because I was denied the right to address an alleged victim it was stated he's retarded and got shot had to receive surgery, well Mr. Lovette states he knows Russel Dillard he don't have seizures and he gets out every day.
- ⑥ Jury selection: was selected for (James Cabbagestalk) Not (Shaheen Cabbagestalk) (See volume 1 of 2 pg. 137 Labeled #119, makes entire grand jury proceedings Bogus rather Invalid.
- ⑦ Ms. Susan B. Hackett Esquire: didn't obtain all the necessary needed transcripts to properly defend me in this writ of Certiorari? There for her skill, knowledge and dealing are under Normal degree Required by set lawyer standards (See transcript requests to courts) by Ms. Hackett Esquire.
- ⑧ Conclusion: I ask the courts over turn this case or give me 10yr negotiated plea for Armed Robbery others concurrent negotiated overturn case. Without the state being able to appeal cause I'm Not (James Cabbagestalk).
2-24-14 (Shaheen Cabbagestalk)
(with the success 1-2013)

Notice of Rule 59(e)

Dear,

Clerk Gwen T. Hyn ~~11/24~~ 24 2013

Hi! I'm sending this rule 59(e) in to be filed with Case 2010-cp-17091 do to Attorney

Heather M. Cannon's laziness and unprofessionalism and telling me to do so in here (July 3, 2012)

letter faxed to McCormick prison which will be made an Exhibit in an up coming Action.

So this is the reason for me sending this in to be clocked stamped and filed and served on the Attorney Generals office as well Judge Baxley and for the Courts to here soon as possible. in regards I ask you send me a copy back filed in regards to per action

2010-cp-17091 I was told in a

LEGAL MAIL MAIL ROOM

July 3rd 2012 Correspondence from Attorney Heather M. Cannon

Nothing stops me from doing this Here's Her address Telephone

and #: 4375 Oleander Drive Myrtle Beach S.C. 29577

843-213-0853

Send her a filed copy of the rule 59(e) as well me and others mentioned
Hewer a blessed day!!!

9-4-12

1

Dear

Turn
over

Ms. Gwen T. Hyatt

Hi! I'm Shaheen

Cabbagestalk and I recently sent in an PER Application to be filed under the Austin Review

Along with an Rule 59(e) and Exhibits. I've been waiting on it to be filed by you and returned I didn't send it in for you to hold it, I have No Attorney And this got nothing

to do with an attorney ^{now} ~~right~~ now. My mother went to your office you told her the Judge said

don't take No More paper work from me well An judge can't tell you that it's not his job or place to do so I need my Austin Review PER Application Back filed ASAP Along with my Rule

59(e) your Not suppose to keep my paperwork

that's against the law to do that and your denying my right of Adequate Access to the Courts (It's my right to Appeal the 5-15-12 decision that's what I've done I'd appreciate you sending me my paper work without me having to get people higher involved

② An Complaint will be filed and others
in Washington D.C. will be contacted if this
continues with you all in Dillon S.C. Send
me my paper work BACK Now your
messing with my Appeal rights.

Sincerely Shalven Cabbagestalk
Without prejudice 1-207

9-4-12

LEGAL MAIL
MAIL ROOM

Clerk Gwen T. Hyatt
P.O. Drawer 1220
Dillon S.C. 29536

Certificate of Service

I hereby certify I did
serve upon the Clerk of
Courts to serve Attorney
Heather M. Cannon on an PCR
Court Addressing of 2010-cp-17091
and Rule 59(e) and all PCR transcripts
and **all EXHIBITS** need be produced
to me to file proper successful appeal
of these orders

By: Shaheen Cabbagestalk
without prejudice UCC 1-207
~~Shaheen Cabbagestalk~~

Notary: JCFranklin

My Commission EXP: 12/16/2019

Date: 07/10/2012

LEGAL MAIL
MAIL ROOM

- ① In Effective Trial Counsel: pg. 6 trial transcript lines 2-3
 mr. manning tells the court he's not ready to go forward. (pg. 5 of the pcr order to dismiss) speaks of "he met with me numerous of times and had adequate time to prepare the case) (see pg. 6 trial transcript lines 2-3 : Contradicts what the Judges order say.
- ② Counsel testified his role in defending me was made difficult because he felt I wasn't telling truth. (pg. 42 of trial transcript lines 24-25: I'm innocent and he believes me) this contradicts the judges order on (pg. 5 of the ^{PCR} order.)
- ③ pg. 5 of ^{PCR} order speaks on Rule 5 and "he went over entire Brady material": (Pg. 6 lines 8-15 of trial transcript states "He don't got entire Rule 5 at the beginning of trial): Contradicting this Judge and the states order.
- ④ pg. 6 of pcr order: speaks of preliminary hearing and I was already indicted (see march 23rd 2007) preliminary hearing request by mr. manning as well mines in Exhibits I submitted at pcr on 5-15-12, also mr J. David watson request for preliminary hearing Attorney.
- ⑤ pg. 6 of ^{PCR} order speaks on I maintained my innocence until an eyewitness allegedly identified me as being "kwan woody" : I'm innocent until this very day never been indicted for Armed robbery (non) was the indictment ever amended on the A/B/W/I/K that was amended and (see Exhibits presented in pcr on 5-15-12 (Shaw negotiated 10yr. plea (plea to Armed Robbery all others Concurrent, and 2 more plea offers not rejected nor Accepted 3 offers in all one held back Solicitor Redmond Admits in before transcript of trial Dated and an Exhibit I submitted in packet to the Courts
- ⑥ pg. 6 of ^{PCR} order Indictment Issues: Trial Judge only Addressed the Assault and Battery with intent to kill Indictment that was amended never the Armed robbery and the A/B/W/I/K was amended cause Counsel testified after illegal plea acceptance that Client was never Indicted (see ^{TR} pg. 104 lines 17-20 indicted James Cabbagestalk (who 5-15-12 came to pcr hearing testified I'm not James Cabbagestalk I'm Shaheen he's James (see April 27th 2009) letter by kathrine H. Hudgins appeals lawyer. (pg. 6 also (you can see sentencing sheet with James Cabbagestalk name. Judge also implements in personal opinions not what record states on (pg. 6 Applicant found himself in a difficult situation chose to plead guilty admitting guilt (I was told I testified mr manning said if case is continued into a trial plead I shouldn't get no more than (ten years) if that cause I was never indicted.

and not in hopes of leniency) the judge states this like I

Just plead guilty at PCR hearing trial court's judge never states I plead in hopes of leniency (I wasn't given lower end of spectrum

10-30 Cause I didn't apologize or show remorse) So how did I plea in hopes of leniency (see trial transcript) Mr. Manning testified I would've got (84/5)

PG. 7 of PCR order: there's nothing on the trial record say I refused to communicate with attorney Manning and I testified he told me I'm not to be in trial I was never indicted I'm not to answer to something I'm not indicted for per 5th Amend. of Constitution. (see Exhibits presented on 5-15-12)

PG. 7 of PCR order: (see preliminary hearing transcript speaks on madness if indicted but I wasn't) The plea was involuntary as I stated in PCR hearing on 5-15-12 If I would've known I was never indicted I would've never plead guilty to the Charge Armed Robbery off the advice of Mr. Manning I did so and this prejudiced me because (if he would've raised this issue before the jury was sworn in the outcome of this trial would've been different as Judge King argues with Mr. Manning (see pg. 107 lines 3-12) (see pg. 104 lines 17-20, pg. 107 lines 13-14) all of the trial

transcript. Why would I plead guilty to something not for me this would've affected my decision to plead guilty serious I could be free from the preliminary hearing if officials and judges wouldn't have mistaken I was indicted James Cabbage talk testified he's James Cabbage talk and I'm shakeen.

PG. 7 Ineffective Assistance of Appellate Counsel of order: (see April 27th 2009 correspondence) But she never litigated her (April 27th 2009 Correspondence) to me in her supplemental brief to the courts. This fact and exhibit was presented to the court and support of my claim.

PG. 7 Breach of Contract in order: I don't feel I should've been sentenced to a term of imprisonment somewhere on the lower end of the possible spectrum. I was told by counsel I wouldn't get no more than 10 yrs. if that. The lower end of the spectrum of (10-30) is (10-14) yrs. Not 18 yrs. plus a plea presented into Exhibits 3 plea Agreements and a transcript stating the solicitor forgot to offer a plea which was never ruled on or addressed by the courts or state which if the judge would've seen all Exhibits carefully examined them he'd seen this statement by the solicitor. (see 5-15-12 Exhibits submitted in support of all PCR claims.) if this judge would've examined the Exhibits he wouldn't be saying there were no plea agreements in this case what so ever this How I know he did illegal activity with my PCR Exhibits,

PCR

° pg. 8 of order (no remorse or apology): There's nothing in law I must apologize or show remorse for a crime I didn't commit or isn't

Noticable or Notifies me of any crime I've committed (See S.C. Code Ann. § 17-19-10: A defendant in a criminal case may not be

tried for an offense for which he has not been indicted, ©

- State, 346 S.C. 506, 552 S.E.2d 290 (2001): A defendant may as part of a plea bargain agree to plead guilty to a crime for which he has been indicted for but of which he is not guilty (I was never indicted

and I'm not guilty of Armed Robbery the notice document isn't for me, (James Cabbagestalk) testified on (5-15-12) PCR hearing and (April 27th 2009) Appellant Counsel Correspondence which is an Exhibit speaks for itself,

° Venue improper pg 8 of order: I should not have been tried in Dillon do to judicial misconduct (I never was seen by any magistrate

for a bond, I never received a preliminary hearing requested (3) times by me, and I was totally ignored and forced to trial, Solicitor Redmond lied so

much, they scared and threatened my Alibi Alma JACKSON until she wouldn't come to court, I knew there wasn't a chance of having a fair

trial if any I'm not indicted, warrants not for me etc. prejudice is me being

in the courts not even indicted attorney Manning not raising the issue before the jury is sworn in which forced me to have to do what he said

plea if they continue you into trial I did so and was given 18 yrs.

Instead I would've took the 10 yr. plea as I thought I plead to (Armed Robbery)

(10 yrs) all other concurrent. I would've had lesser time and I wouldn't be in trial to have allowed Judge King's illegal Amending of the A/B/W/Z/K indictment.

° pg. 8 of order Constitutional violations: If the warrants not for me I presented the warrants for James Cabbagestalk Wong Sun v. U.S. speaks of

the 4th amendment as well due process Constitutional violations this is and

the 5th amendment: No person shall be held to answer to a capital or otherwise

infamous crime unless on presentment of a grand jury indictment. An indictment derives from the warrant both were for James Cabbagestalk whom

testified on 5-15-12 PCR hearing has James Cabbagestalk (not me.)

° pg. 8 prosecutorial misconduct of order to pg. 9: see the Exhibits submitted on 5-15-12 hearing

pg. 9 of order continued: if this Judge J. Michael Baxley would've properly went thru all Exhibits submitted as support of my ~~per~~ issues and claim he would've seen the plea for 10 yrs. plea to Armed Robbery negotiated signed off by him dated and this dealings is a lie and can be contradicted See Exhibits I submitted 5-15-12.

pg. 9 of order: speaking of the plea negotiation and the state was not obligated to do so by law the negotiated contract for (10 yrs. plea to Armed Robbery All others Concurrent was to be kept its negotiated and asked to be re-done as I'll accept it then (18 yrs) 85%, I'd rather 10 yrs Judge Baxley didn't consider Exhibits at all.

pg. 9 of order: the chances of my success was very high if law was followed by Judge King I would've gotten a preliminary hearing and no negotiated plea would've ever occurred there wouldn't be any charges to answer to James Cabbage stalk could've testified at my preliminary hearing, charges could've been thrown out immediately I could've been free with my family. Also the Judge J. Michael Baxley makes personal opinions which he's not lawfully allowed to do only rule with facts of law on the issues no plea agreement was at my own will (I did what Attorney Manning told me to do) per jury comes in were the solicitor testifies to the judge there's nothing negotiated (see Exhibits negotiated 10 yr plea, plea to Armed Robbery all others concurrent) (see trial transcript pg.)

pg. 10 of order Judicial misconduct: the things said are totally a lie plus the judge Clerk of courts, as well others are required to assure all jurors are qualified to be elected and the certificate requirements are met as required, and this was brought to Mr. Manning's attention plus he's a person that I feel would've given me a fair impartial verdict and is from around the areas I can relate to.

pg. 10 of order Errors in indictment: The essence of my claim doesn't only go to the face of the indictment if the judge would've stop trying to think for me he'd see I've never been indicted, never indicted by 12 legally qualified grand jurors March 5th 2007 they allegedly convened, March 1st 2007 it's true billed only Ashley Hill seen if the others met March 5th, chief Justice Jean teal canceled that session of grand jury meetings (see Exhibits)

pg. 10 of order: James Cabbagstalk testified 5-15-12 at hearing
hes James Cabbagstalk I'm (Shaheen Ramel Cabbagstalk) this speaks
for itself and shows ^{*}(I was never notified of anything technically
I'm not a defendant in the Courts of general sessions (see Rector v. state)

(See Exhibits warrants, indictments April 27th 2009 Correspondence from Kathrine Hedgins, see
S.E. DC. Policy 09-21.09 Inmate Records plan policy papers, see sentencing sheets,
see trial transcript pg. 104 lines 17-20, Trial transcript pg. 106 lines 16-21, pg. 104,
lines 11-12) pg. 107 lines 13-14, pg. 110 Indictment amended pg. 108 lines 22 - pg. 109
1-16): Not on indictment disagree. ② Also pg. 12 of order: Nothing in law

states (I must show my uncle James Cabbagstalk dealt in foul play or committed
a crime that's up to the state to prove and not my job I'm not bled as
an police, an informant, etc. It's not my job to do the cop's job but
it's not within law to punish some one for not doing there job.

pg. 12 of order: I was asked did I know what charges were on the
indictment (I seen James Cabbagstalk was indicted for Armed
Robbery which has nothing to do with me being notified of an crime
to which I must answer to and nothing appries me of any
-thing if its not for me by a legally qualified grand jury of 12
members which is lawfully required.

pg. 12 other Allegations: This is a lie several evidence was presented in
the Exhibits which were well (over 200) Exhibits to support my Claims
all motions weren't addressed period nor was all the Issues in Application
even seen by the judge or ruled on making it clear that I was
not given an fair and impartial PCR hearing and the order
of dismissal by S. Michael Baxley needs to be over turned and
Relief granted to me the Courts Committed a Brady Violation from
Not presenting the entire PCR records to be ruled on from before
5-15-12 I was going to PCR hearings those transcripts aren't spoken of
nor the Exhibits there fore I ask do to this misconduct the
PCR Case 2010-cp-17091 be over turned Relief granted as well Exhibits

EXHIBITS to support this objection to clear and as well as my
My Rule 59(c), see Lafler v. Cooper cite: 566 U.S. 2012 in regards to plea agreement.

① Wong Sun v. United States 371 U.S. 471 (1963) (speaks of the fruit of a poisonous tree) from my warrants to indictment for Armed Robbery, not for me for James Cabbagestale whom testified at PCR hearing.

② State v. Nelson unpublished opinion No. 98-up-502 submitted November 4, 1998 - Filed November 16, 1998 (vacated) sees as support of PCR claim (Not indicted) Can't answer to charge not for you.

③ The South Carolina Supreme Court has referenced with approval the following statement from the 5th Circuit as to the unfortunate consequences resulting from a trial judge's comment on the facts of a case: The conduct of the judge, in the performance of all his duties, should appear to be impartial. The impartiality of the judge - his avoidance of the appearance of becoming the advocate of either one side or the other of the pending controversy which is required by the conflict of the evidence to be finally submitted to the jury - is a fundamental and essential rule of especial importance in criminal cases. The importance and power of his office and the theory and rule requiring impartial conduct on his part, make his slightest action of great weight with the jury. Adler v. United States, 182 F. 464, 472-474 (5th Cir. 1910), cited State v. Furtick 144 S.E. 839, 840 (1928). The Furtick Court further observed "in view of the well-known fact of the great influence of the presiding judge upon the minds of a jury, who are quick to seize upon any intimation by word or gesture from him, it is better to leave the examination of witnesses to those charged with that duty, in the absence of a plain omission to elicit evidence for or against a defendant," Furtick 144 S.E. at 840. It has long been recognized that even a slight remark, apparently innocent in its language, may, when uttered by the Court, have a decided weight in shaping the opinion of the jury." State v. Pruitt, 187 S.C. 58, 61, 196 S.E. 371, 372 (1938); Soosebee v. Leeke 293 S.C. 531, 534, 362 S.E. 2d 22, 24 (1987). Even where the judge properly acts to bring out testimony, he must do so in a fair and impartial manner and "should not by the form or manner of his questions express or indicate to the jury his opinion as to the facts of the case." State v. Gaskins 284 S.C. 105, 119, 326 S.E. 2d 132, 141 (1985) (Here the PCR judge tipped his hand as to his opinion as to the facts of the case. He shouldn't have stated personal opinions and made personal remarks about plea agreements and situations.)

→ Continued

such as indictments and preliminary hearing situation which the trial transcript as well transcripts that were presented before trial speaks facts and as the Courts can see Transcript March 7th, 2007 of Honorable Paul M. Burch while J. David Watson was Attorney for Mr. Shaheen Gbbagestalk Circuit Court reporter Hattie O. Gordon speaks on the preliminary hearing, and motion of Dismissal of Charges as well pg. 8 of this transcript the Solicitors office was notified of this see lines 14-18. also Complaints on Mr. J. David Watson pg. 10 lines 25 - pg. 11 lines 1-3 motion granted to get rid of Mr. Watson pg. 12 states you can't go forward with a lawyer once this was done lines #9 & complaint. pg. 13 speaks on Bond hearings and preliminary hearing lines 1-25, pg. 14 lines 8-25 speaks on indictment, indictment Date, indictment Attorney has not true billed (Clerk of Court kept it) which Chief Justice Tol put in an order outlawing that practice see Exhibit of Rule 3(C) as well lines 24 - pg. 15 1-6 Supreme Court rules of court if your ^(Indictment is) true billed you don't have a preliminary hearing its been ruled on. (What's being ignored is Trial transcript pg. 104 lines 17-20 Not James Gbbagestalk) pg. 107 lines 13 and 14, pg. 112 lines 22 - pg. 113 1-3) Trial transcript speaks on this, this is on the record can't be disputed and could have changed the outcome of my case I could be free now my Direct Appeal Attorney ~~with~~ Thome Hudgins never made this a part of her brief to the Courts which is a part of my trial and case dealings. All attorneys touched this case from trial to PCR Courts did not properly investigate my case cause if so these transcripts which pertain to my case would've been mentioned there's no proper Rule 5 Brady Cooperations I wasn't effectively represented by No Attorney ever touched this case, as well Brady material was with Hedd and never mentioned to have a fair and impartial trial, or any hearings there fore the Courts as well never seen (July 26th 2007 Transcript by Brenda R. Babb Circuit Court Reporter heard by Honorable Howard P. King or (MAY 31st 2007 transcript heard by Honorable J. Mark Hayes II Court reporter Bonnie H. Kelly Circuit Court Reporter.

LEGAL MAIL
MAIL ROOM

Shaluen Cabbages 116 H 29 STS
090 Wilsaleg Hwy (LEE S: F,
SINUA B 125-14
Bis Hopville S.C. 29660

Agnew

In the Agency
Free of Charge

Daniel Eskenrose clerk
The S.C. Supreme Court
P.O. Box 11330
Columbia SC, 29211

LEGAL MAIL ONLY

LEE CI MAIL ROOM
FEB 26 2014

RECEIVED

THE DEPARTMENT OF CORRECTIONS HAS NOT BEEN
THIS ITEM, THEREFORE, THE DEPARTMENT DOES NOT
ASSUME RESPONSIBILITY FOR ITS WRITTEN CONTENTS.
LEE CORRECTIONAL INSTITUTE
SC DEPARTMENT OF CORRECTIONS