

IN THE SUPREME COURT OF SOUTH CAROLINA

COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

COURT OF COMMON PLEAS

THE HON. G. EDWARD WELMAKER, CIR. CT. JUDGE

CASE NO: 2013-CP-23-0993

DARNEIL E. HUDSON # 227328 ..... PETITIONER

v.

STATE OF SOUTH CAROLINA ..... RESPONDENT

PETITION FOR WRIT OF CERTIORARI

PURSUANT TO RULES 227(C) AND 243

(C) OF THE S.C. APP. CT. RULES

OTHER COUNSEL FOR THE RECORD  
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DARNEIL E. HUDSON # 227328  
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PETITIONER DARNELLE HUDSON # 227328, APPEALS THE ORDER OF DISMISSAL IN CASE NO: 2013-CP-23-0993, HUDSON V. STATE WHICH IS A P.C.R. ACTION TAKEN IN GREENVILLE COUNTY, COURT OF COMMON PLEAS. THE ORDER WAS ENTER ON THE DATE OF JANUARY 22, 2014 BY THE HON. EDWARD WELMAKER, PRESIDING JUDGE FOR THE 13<sup>TH</sup> JUR. CIR OF GREENVILLE COUNTY, IN THE COURT OF COMMON PLEAS.

PETITIONER RECEIVED ORDER OF DISMISSAL ON THE DATE OF JANUARY 30<sup>TH</sup> 2014.

PURSUANT TO S.C. APP. CT. RULES 227 (C) AND 243 (C) PETITIONER TIMELY FILE THIS PETITION FOR WRIT OF CERTIORARI AND PROVIDE THIS COURT WITH AN SUFFICIENT EXPLANATION AS TO WHY THE P.C.R. COURT ACTIONS AND DETERMINATIONS WAS IMPROPER WHICH IS CONTROLLED BY ERR OF LAW. PETITIONER SEEKS WRIT OF CERTIORARI AND MOVES UPON THIS COURT TO REVERSE THE HON. G. EDWARD WELMAKER ORDER OF DISMISSAL IN HUDSON V. STATE, P.C.R. APPLICATION NO: 2013-CP-23-0993.

PETITIONER CLAIMS HE'S ENTITLED TO THE GRANT OF WRIT OF CERTIORARI AND REVERSAL OF ORDER DUE TO THE FOLLOWING GROUNDS PRESENTED BELOW.

### ISSUES PRESENTED

- 1). DID THE P.C.R. COURT ABUSE ITS DISCRETION IN DENYING PETITIONER OF HIS STATUTORY RIGHT TO APPOINTMENT OF COUNSEL PURSUANT TO S.C.R. CIV. PRO. RULE 71.1 (D) WHEN PETITIONER WAS GRANTED AN HEARING CONCERNING WHETHER S.C. CODE ANN § 17-27-45 (A) ONE YEAR STATUTE OF LIMITATION APPLY TO THE RESPONDENTS MOTION TO DISMISS PETITIONER'S S.C.R. CRIM. P. RULE 29 (B) MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER DISCOVERED EVIDENCE MOTION?
- 2). DID THE P.C.R. COURT ERRED IN FAILING TO HOLD AN ON THE RECORD HEARING CONCERNING WHETHER PETITIONER KNOWINGLY, VOLUNTARY AND INTELLIGENTLY WAIVED HIS STATUTORY RIGHT TO APPOINTMENT OF COUNSEL PURSUANT TO S.C.R. CIV. PRO. RULE 71.1 (D)?
- 3). DID THE P.C.R. COURT ERRED IN FAILING TO GRANT PETITIONER AN P.C.R. EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL PURSUANT TO S.C.R. CRIM. P. RULE 29 (B) MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER DISCOVERED EVIDENCE MOTION?

4). PROCEDURAL HISTORY

PETITIONER IS CONFINED IN THE SOUTH CAROLINA DEPT OF CORR. PURSUANT TO ORDERS OF COMMITMENT OF THE CLERK OF COURT FOR GREENVILLE COUNTY. PETITIONER WAIVED PRESENTMENT TO THE GREENVILLE COUNTY GRAND JURY FOR ARMED ROBBERY (1995-GS-23-6102) AND FOR ASSAULT AND BATTERY WITH THE INTENT TO KILL (1995-GS-23-6103) WHICH WAS REPRESENTED BY MR. HAI W. ROACH, ESQ. ON OCTOBER 26 1995. THE PETITIONER PLED GUILTY TO THE ARMED ROBBERY AND ASSAULT AND BATTERY OF AN HIGH AND AGGRAVATED NATURE (ABHAN). HE WAS SENTENCED BY THE HON. MARC WESTBROOK UNDER THE YOUTHFUL OFFENDER ACT TO CONCURRENT TERMS NOT TO EXCEED SIX YEARS SUSPENDED TO FIVE YEARS PROBATION FOR (ABHAN). PETITIONER DID NOT APPEAL.

ON THE DATE OF FEBRUARY 19, 2013 PETITIONER FILED UPON THE COURT OF COMMON PLEAS FOR GREENVILLE COUNTY AN MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER DISCOVERED EVIDENCE PURSUANT TO S.C.R. CRIM P. RULE 29(B).

PETITIONER MADE THE FOLLOWING ALLEGATIONS TO SUPPORT HIS CLAIM FOR RELIEF:

1). NEWLY-AFTER DISCOVERED EVID.

(A) PROSECUTION FAILED TO DISCLOSE FAVORABLE EVIDENCE.

VIOLATING S.C.R. CRIM. P. RULE 5 BRADY DISCLOSURE

## 2). INVOLUNTARY GUILTY PLEA

THE RESPONDENT MADE ITS RETURN AND MOTION TO DISMISS ON ~~8-15-2013~~ 8-15-2013.

PETITIONER WAS SERVED WITH A CONDITIONAL ORDER OF DISMISSAL ON 8-21-2013 WHICH GRANTED HIM 20 DAYS TO RESPOND TO THE RESPONDENTS MOTION TO DISMISS.

PETITIONER FILED AN TIMELY RESPONSE TO THE RESPONDENTS CONDITIONAL ORDER OF DISMISSAL ON THE DATE OF 2013. INCLUDED WAS EXHIBITS PRESENTED UPON THE COURT TO SUPPORT HIS ENTITLEMENT TO AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL.

ON AUGUST 21, 2013 THE HON D. GARRISON HILL ACTING IN HIS CAPACITY AS CHIEF ADMINISTRATIVE JUDGE SET THE STATE'S MOTION TO DISMISS FOR A HEARING.

ON DECEMBER 19, 2013 AN HEARING WAS HELD AT THE GREENWICH COUNTY COURTHOUSE, IN THE COURT OF COMMON PLEAS.

PETITIONER WAS PRESENT AND ACTED PRO SE.

THE RESPONDENT WAS REPRESENTED BY MS. KAREN C. RATIGAN ESQ. FOR THE SOUTH CAROLINA ATTORNEY GENERAL OFFICE.

## ARGUMENTS

1.

THE P.C.R. COURT ABUSED HIS DISCRETION IN DENYING PETITIONER OF HIS STATUTORY RIGHT TO APPOINTMENT OF P.C.R. COUNSEL PURSUANT TO S.C.R. CIV. P. RULE 71.1 (D). WHEN PETITIONER WAS GRANTED AN HEARING CONCERNING WHETHER S.C. CODE ANN § 17-27-45 (A) ONE YEAR STATUTE OF LIMITATION APPLIED TO THE RESPONDENTS MOTION TO DISMISS PETITIONER'S S.C.R. CRIM P. RULE 29 (B) MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER DISCOVERED EVIDENCE MOTION.

PETITIONER WAS CALLED TO AN HEARING ON THE DATE OF DECEMBER 19, 2013 AT THE GREENVILLE COUNTY COURTHOUSE WHICH WAS SET BY THE HON. D. GARRISON HILL ON AUGUST 21, 2013 CONCERNING THE RESPONDENT'S MOTION TO DISMISS PETITIONERS P.C.R. APPLICATION PURSUANT TO S.C. CODE ANN § 17-27-45 (A) ONE YEAR STATUTE OF LIMITATION. THE HON. D. GARRISON HILL FAILED TO APPOINT P.C.R. COUNSEL IN THAT MATTER PURSUANT TO S.C.R. CIV. P. RULE 71.1 (D)

AT THE HEARING MS. KAREN C. RATIGAN ESQ. FOR THE RESPONDENT TESTIFIED THAT UNDER S.C. CODE ANN § 17-27-45 (A) THE ONE

6).

YEAR STATUTE OF LIMITATION APPLY TO THE RESPONDENT AND MOULD UPON THE HON. WELMAKER TO DISMISS PETITIONER'S P.C.R. APPLICATION AS BEING UNTIMELY FILED. THE RESPONDENT SOLELY CLAIM AT THE HEARING WAS PURSUANT TO S.C. CODE ANN §17-27-45 (A) WHICH READS AS FOLLOWS: AN APPLICATION FOR RELIEF FILED PURSUANT TO THIS CHAPTER MUST BE FILED WITHIN ONE YEAR AFTER THE ENTRY OF A JUDGMENT OF CONVICTION OR WITHIN ONE YEAR AFTER THE SENDING OF THE REMITTITUR TO THE LOWER COURT FROM AN APPEAL OR THE FILING OF THE FINAL DECISION UPON AN APPEAL, WHICH EVER IS LATER.

PETITIONER TESTIFIED TO THE FOLLOWINGS ON THE RECORD.

- 1). HE DISCOVERED NEWLY AFTER DISCOVERED EVIDENCE ON THE DATE OF JANUARY 23, 2013 THAT THE STATE WITNESS MR. HASKAWNSAN K. BROWN HAD SHOT HIMSELF IN HIS HEAD ON NOVEMBER 27, 1993 IN AN ATTEMPT TO COMMIT SUICIDE WHICH CAUSED THE VICTIM BRAIN DAMAGE & DEFECTS.
- 2). THAT THE EVIDENCE HE DISCOVERED WAS FAVORABLE TO HIM BECAUSE HE COULD CHALLENGED THE STATE'S WITNESS COMPETENCY TO STAND TRIAL AND TESTIFY AGAINST HIM.
- 3). THAT THE PROSECUTION HAD NO EVIDENCE TO LINK HIM TO THE CHARGES BUT ONLY THE VICTIM'S IDENTIFICATION AND STATEMENT WHICH HE GAVE TO THE POLICE AGAINST HIM.
- 4). THAT THE NEWLY AFTER DISCOVERED EVIDENCE WAS EXCULPATORY EVIDENCE BECAUSE THE VICTIM IS INCOMPETENT DUE TO THE BRAIN DAMAGE WHICH AFFECTED HIS MEMORY.

- 5). THAT THE PROSECUTION KNEW OF THE VICTIM SUICIDE ATTEMPT AND FAILED TO DISCLOSED THAT INFORMATION TO HIS ATTORNEY IN THE RULE 5 BRADY DISCLOSURE, OR IF THEY DID NOT KNOW THEY SHOULD HAVE KNOWN ABOUT THE VICTIM'S SUICIDE ATTEMPT THAT DAMAGED HIS BRAIN.
- 6). THAT HAD HE WOULD OF KNOWN OF THAT FAVORABLE EVIDENCE HE WOULD OF NEVER PLEAD GUILTY BUT WOULD OF STOOD TRIAL.
- 7). THAT IF HE WOULD OF STOOD TRIAL ITS A REASONABLE PROBABILITY THE OUTCOME WOULD OF BEEN ACQUITTAL BECAUSE THE VICTIM COULD NOT TESTIFY AGAINST HIM.
- 8). THAT THE VIOLATION OF BRADY VIOLATED HIS U.S. CONST. RIGHTS UNDER THE 5<sup>TH</sup>, 6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS.
- 9). THAT THE EVIDENCE HE DISCOVERED HE COULD NOT HAVE DISCOVERED THIS INFORMATION BECAUSE HE NOR HIS ATTORNEY NEVER KNOWN OF THE VICTIM AND THAT IT WAS NO WAY POSSIBLE TO HAVE LEARNED OF THIS INFORMATION OF THE VICTIM'S BRAIN DAMAGE DEFECTS BECAUSE HIS MEDICAL RECORDS IS CONFIDENTIAL.
- 10). THAT ON FEBRUARY 19, 2013 HE FILED A P.C.R. APPLICATION DUE TO THE NEWLY AFTER DISCOVERED EVIDENCE HE DISCOVERED.

PETITIONER REQUESTED UPON THE P.C.R. COURT FOR THE APPOINTMENT OF COUNSEL IN THAT MATTER AND THE HON WEIMAKER STATED TO PETITIONER YOU WILL GET ONE IF I GIVE YOU ONE.

## STANDER OF REVIEW

THE P.C.R. COURT ABUSED HIS DISCRETION IN FAILING TO APPOINT P.C.R. COUNSEL TO ASSIST PETITIONER PURSUANT TO S.C.R. CIV. P. RULE 71.1 (D) CONCERNING WHETHER S.C. CODE ANN § 17-27-45 (A) APPLIED TO THE RESPONDENT'S MOTION TO DISMISS PETITIONER'S NEWLY AFTER DISCOVERED EVIDENCE MOTION PURSUANT TO S.C.R. CRIM. P. RULE 29 (B). THE VIOLATION OF THE P.C.R. COURT FAILURE TO APPOINT COUNSEL DENIED PETITIONER OF HIS STATUTORY RIGHT PURSUANT TO S.C.R. CIV. P. RULE 71.1 (D). WHICH READS AS FOLLOWS: APPOINTMENT OF COUNSEL FOR HEARING. IF, AFTER THE STATE HAS FILED ITS RETURN, THE APPLICATION PRESENT QUESTIONS OF LAW OR FACT WHICH WILL REQUIRE A HEARING, THE COURT SHALL PROMPTLY APPOINT COUNSEL TO ASSIST THE APPLICANT IF HE IS INDIGENT. COUNSEL SHALL BE GIVEN A REASONABLE TIME TO CONFER WITH THE APPLICANT. COUNSEL SHALL INSURE THAT ALL AVAILABLE GROUNDS FOR RELIEF ARE INCLUDED IN THE APPLICATION AND SHALL AMEND THE APPLICATION IF NECESSARY.

## LAW ANALYSIS

UNDER 71.1(D) OF S.C.R. CIV. P., AN INDIGENT APPLICANT WHO IS GRANTED A HEARING HAS A STATUTORY RIGHT TO BE REPRESENTED BY A COURT-APPOINTED ATTORNEY AL-SHABAZZ V. STATE 338 S.C. 354, 527 SE 2d 742 (2000) CITING WHITEHEAD V. STATE 310 S.C. 532, 1462 SE 2d 315 (1992) THUS, IN GRAY V. STATE 557 SE 2d. 662 THE S.C. SUPREME COURT HAS REMAND THAT CASE BACK TO THE LOWER COURT FOR THE APPOINTMENT OF COUNSEL AND

AN EVIDENTIARY HEARING REGARDING PETITIONER'S CLAIM OF  
EQUITABLE BILLING OF THE ONE YEAR STATUTE OF LIMITATION.  
THE SAME SITUATION FOUNDED IN GRAY V. STATE IS FOUNDED IN  
THIS MATTER, PETITIONER NEVER KNOWINGLY, VOLUNTARY OR  
INTELLIGENTLY WAIVED HIS RIGHT TO COUNSEL AND THERE'S NO ON  
THE RECORD WAIVER TO SUBSTANTIATE ANY WAIVER. BRANNON  
V. STATE 293 S.C. 528, 362 SE 2d 20. THE ABUSED OF  
DISCRETION COMMITTED BY THE P.C.R. COURT PREJUDICE  
PETITIONER DUE TO DENYING PETITIONER TO THE ASSISTANCE  
OF COUNSEL TO SHOW THE COURT THAT PURSUANT TO S.C. CODE ANN  
§ 17-27-45(C) PETITIONER'S APPLICATION IS TIMELY FILED.  
COATS V. STATE. 575 SE 2d 557 (S.C. 2003)

## CONCLUSION

WHEN THE P.C.R. COURT DECISION IS CONTROLLED BY ERR OF LAW  
THIS COURT MUST REVERSE. PIERCE V. STATE 338 S.C. 139, 526  
SE 2d. 222 (S.C. 2000). IN THE INTEREST OF JUSTICE AKIN  
TO GRAY V. STATE 557 SE 2d 662 PETITIONER SEEK WRIT OF  
CERTIORARI AND REQUEST UPON THIS COURT TO REVERSE THE P.C.R.  
COURT ORDER OF DISMISSAL AND REMAND THE MATTER IN HUDSON  
V. STATE BACK TO THE LOWER COURT FOR A NEW HEARING WITH  
THE ASSISTANCE OF A COURT APPOINTED ATTORNEY.

2.

THE P.C.R. COURT ERRED IN FAILING TO HOLD AN ON THE RECORD HEARING CONCERNING WHETHER PETITIONER KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY WAIVED HIS STATUTORY RIGHT TO APPOINTMENT OF P.C.R. COUNSEL.

THE HON. WEIMAKER NEVER QUESTIONED PETITIONER ON THE RECORD AT THE HEARING HELD ON DECEMBER 19, 2013 WHETHER PETITIONER KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY WAIVE HIS STATUTORY RIGHT TO THE ASSISTANCE OF P.C.R. COUNSEL PURSUANT TO S.C.R. CIV.P. RULE 71.1 (D). UNDER S.C.R. CIV.P. RULE 71.1 (D) APPOINTMENT OF COUNSEL FOR HEARINGS, READS AS FOLLOWS: IF, AFTER THE STATE HAS FILED ITS RETURN, THE APPLICATION PRESENT QUESTIONS OF LAW OR FACT WHICH WILL REQUIRE A HEARING, THE COURT SHALL PROMPTLY APPOINT COUNSEL TO ASSIST THE APPLICANT IF HE IS INDIGENT. COUNSEL SHALL BE GIVEN A REASONABLE TIME TO CONFER WITH THE APPLICANT. COUNSEL SHALL INSURE THAT ALL AVAILABLE GROUNDS FOR RELIEF ARE INCLUDED IN THE APPLICATION AND SHALL AMEND THE APPLICATION IF NECESSARY. UNDER THAT RULE, AN INDIGENT APPLICANT WHO IS GRANTED A HEARING HAS A STATUTORY RIGHT TO BE REPRESENTED BY A COURT-APPOINTED ATTORNEY GRAY V. STATE 557 SE2d, 662. IN THIS MATTER, PETITIONER WAS GRANTED AN HEARING BY THE HON. D. GARRISON HILL CONCERNING THE RESPONDENT'S MOTION TO DISMISS PETITIONER'S P.C.R. APPLICATION DUE TO THE STATUTE OF LIMITATION PURSUANT TO S.C. CODE ANNS 17-27-45(A) WHICH THE SUPREME COURT HAS HELD IN GRAY V.

STATE 557 SE 2d 662 THAT A P.C.R. APPLICANT HAS THAT RIGHT TO ASSISTANCE OF COUNSEL WHEN THE STATE MOVES FOR SUMMARY DISMISSAL OF AN P.C.R. APPLICATION DUE TO THE STATUTE OF LIMITATION WHEN THERE IS A QUESTION OF LAW OR FACTS THAT CAN NOT BE REFUTED BY A RECORD. MCCOY V. STATE 401 S.C. 363, 737 SE 2d 625 (2013).

### STANDER OF REVIEW

PETITIONER WAS ENTITLED TO ASSISTANCE OF COUNSEL PURSUANT TO S.C.R. CIV. P. RULE 71.1 (D) GRAY SUPRA. THE P.C.R. COURT ERRED WHEN IT FAILED TO QUESTION PETITIONER ON THE RECORD WHETHER HE KNOWINGLY, VOLUNTARY, AND INTELLIGENTLY WAIVED THAT STATUTORY RIGHT. BRANNON V. STATE. 293 S.C. 528, IN BRANNON, A APPLICANT'S KNOWINGLY AND VOLUNTARY WAIVER OF A STATUTORY OR CONSTITUTIONAL RIGHT MUST BE ESTABLISHED BY A COMPLETE RECORD BY THE COURT, THIS RECORD MAY BE ACCOMPLISHED BY COLLOQUY BETWEEN THE COURT AND THE APPLICANT, BETWEEN COURT AND APPLICANT'S COURT ATTORNEY OR BOTH. THE SUPREME COURT FOUNDED THAT BRANNON DID NOT KNOWINGLY, VOLUNTARY AND INTELLIGENTLY WAIVE HIS STATUTORY RIGHT TO A P.C.R. EVIDENTIARY HEARING ON THE RECORD AND REVERSED AND REMAND THAT PROCEEDING BACK TO THE LOWER COURT DUE TO THE P.C.R. COURT ERR. PIERCE V. STATE 338 S.C. 139, 526 SE 2d 222 (2000)

## LAW ANALYSIS

PETITIONER NEVER KNOWINGLY, VOLUNTARY OR INTELLIGENTLY WAIVED HIS STATUTORY RIGHT TO P.C.R. COUNSEL AND THE RECORD IS SILENT GRAY SUPRA, BRANNON SUPRA. BY THE P.C.R. COURT ERR PETITIONER WAS PREJUDICE DUE TO BEING DENYED TO APPOINTMENT OF COUNSEL WHEN HE NEVER KNOWINGLY, VOLUNTARY OR INTELLIGENTLY WAIVED HIS RIGHT TO ASSISTANCE OF COUNSEL PURSUANT TO S.C.R. CIV. P. RULE 71.1 (D) TO CHALLENGE THE RESPONDENT'S MOTION TO DISMISS HIS P.C.R. APPLICATION DUE TO THE ONE YEAR STATUTE OF LIMITATION PURSUANT TO S.C. CODE ANN § 17-27-45 (A).

## CONCLUSION

WHEN THE P.C.R. COURT DECISION IS CONTROLLED BY ERR OF LAW THIS COURT MUST REVERSE PIERCE SUPRA. PETITIONER SEEK WRIT OF CERTIORARI AND REQUEST UPON THIS COURT TO REVERSE AND REMAND THIS MATTER BACK TO THE LOWER COURT FOR A HEARING WITH THE APPOINTMENT OF P.C.R. COUNSEL.

3.

THE P.C.R. COURT ERRED IN FAILING TO GRANT PETITIONER AN P.C.R. EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL PURSUANT TO S.C.R. CRIM. P. RULE 29 (B) MOTION

FOR NEW TRIAL BASED UPON NEWLY AFTER DISCOVERED EVIDENCE MOTION.

PETITIONER FILED A P.C.R. APPLICATION ON THE DATE OF FEBRUARY 19, 2013 ALLEGING THAT HE DISCOVERED EXCULPATORY EVIDENCE ON THE DATE OF JANUARY 23, 2013 THAT THE STATE KEY WITNESS MR. HADHAWSAN K. BROWN DID ON NOVEMBER 27, 1993 HAD SHOT HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE WHICH CAUSED BRAIN DAMAGE DEFECTS TO THE WITNESS. THESE DEFECTS ARE LISTED IN EXHIBIT ( ) WHICH WAS SUBMITTED TO THE P.C.R. COURT IN PETITIONER'S RESPONSE TO THE RESPONDENT'S MOTION TO DISMISS. IN PETITIONER'S RESPONSE TO THE RESPONDENT'S CONDITIONAL ORDER OF DISMISSAL. PETITIONER ALLEGED THE FOLLOWING LISTED BELOW THAT ENTITLED HIM TO AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL:

- 1). THAT HE DISCOVERED EXCULPATORY EVIDENCE WHICH WAS THE DISCOVERED OF THE VICTIM SUICIDAL ATTEMPT WHICH CAUSED BRAIN DAMAGE TO THE VICTIM'S BRAIN. SEE EXHIBIT 5
- 2). THAT THE EVIDENCE COULD OF BEEN CHALLENGED AT A TRIAL UNDER S.C.R. EVID. RULE 601 (B). BECAUSE THE VICTIM IS INCOMPETENT TO STAND TRIAL AND TESTIFY AGAINST THE PETITIONER.
- 3). THAT THE EVIDENCE HE DISCOVERED FELL UNDER THE NEWLY

AFTER DISCOVERED EVIDENCE WHICH WAS THAT THE STATE PROSECUTION COMMITTED A S.C.R. CRIM. P. RULE 5 BRADY VIOLATION BECAUSE THEY KNEW OF THE VICTIM'S SUICIDE ATTEMPT AND FAILED TO DISCLOSED THAT INFORMATION TO PETITIONER'S ATTORNEY, OR THAT IF THEY DIDN'T KNOW OF THE VICTIM'S SUICIDE ATTEMPT THEY SHOULD HAVE KNOWN.

4). THAT THE VIOLATION OF BRADY VIOLATED HIS U.S. CONST. RIGHTS UNDER THE 5<sup>TH</sup>, 6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS.

5). THAT HIS 1995 GUILTY PLEA IS INVOLUNTARY BECAUSE OF THE BRADY VIOLATION.

6). THAT HAD HE WOULD OF KNOWN OF THE EXCUIPATORY EVIDENCE THAT THE STATE PROSECUTION FAILED TO DISCLOSE HE WOULD OF NEVER PLEAD GUILTY TO THE CHARGES BUT WOULD OF INSISTED TO STAND TRIAL.

7). PETITIONER SUBMITTED EVIDENCE UPON THE P.C.R. COURT TO SUBSTANTIATE HIS ENTITLEMENT TO AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL SEE, ALL EXHIBITS ATTACH TO THE RESPONSE TO THE CONDITIONAL ORDER OF DISMISSAL. SEE EXHIBIT'S

8). THAT UNDER S.C. CODE ANN § 17-27-45 (C) HIS P.C.R. APPLICATION IS TIMELY FILED.

WITHIN THE P.C.R. APPLICATION AND IN PETITIONER'S RESPONSE TO THE RESPONDENT'S MOTION TO DISMISS THE PETITIONER PRESENTED CASE LAW TO SUPPORT HIS CLAIM TO AN EVIDENCE HEARING AND APPOINTMENT OF COUNSEL.

### STANDER OF REVIEW

THE P.C.R. COURT ERRED WHEN IT DENIED PETITIONER OF HIS STATUTORY RIGHT PURSUANT TO S.C. CODE ANN §17-27-80 AND S.C.R. CIV. P. RULE 71.1 (E) TO AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL TO PROVE HIS ENTITIEMENT TO RELIEF. AT AN EVIDENTIARY HEARING, THE APPLIGANT, AS THE MOVING PARTY, PRESENTS HIS EVIDENCE FIRST AND HAS THE BURDEN TO PROVE, BY THE PROPONDERANCE OF THE EVIDENCE THAT HE IS ENTITLED TO THE RELIEF SOUGHT IN THE APPLICATION, BANNISTER V. STATE 309 SE 2d 807, THUS THE EVIDENCE PRESENTED AT AN EVIDENTIARY HEARING MUST BE OF PROBATIVE VALUE MOOREHEAD V. STATE 496 SE 2d 415. THE ALLIGATIONS PRESENTED BY AN APPLICANT MUST BE MORE THEN MERE SPECULATIONS. TO ENTITIE AN APPLICANT TO RELIEF CHERY V. STATE 386 SE 2d 624, THUS AS A PRIMARY MATTER, WHEN A APPLICANT PRESENT CLAIMS THAT HE IS ENTITLED TO RELIEF THE P.C.A. COURT MUST ASSUME FACTS PRESENTED BY THE APPLICANT ARE TRUE AND VIEW THOSE FACTS IN THE LIGHT MOST FAVORABLE TO THE APPLICANT. WILSON V. STATE 559 SE 2d 581. THE P.C.R. COURT IS ENTITLED TO DENY RELIEF WHEN A APPLICANT ONLY

FAILS TO ESTABLISH HIS ENTITLEMENT TO RELIEF BY THE PREPONDERANCE OF THE EVIDENCE. ROLLISON V. STATE 552 SE2d. 290, PALACIO V. STATE 511 SE 2d 62.

### LAW ANALYSIS

IN REVIEWING PETITIONER'S ALLEGATIONS AND EVIDENCE PRESENTED IN HIS RESPONSE TO THE RESPONDENT'S MOTION TO DISMISS AN EVIDENTIARY HEARING WAS APPROPRIATE DUE TO THE APPLICANT RAISING A QUESTION OF MATERIAL FACT THAT ONLY CAN BE RESOLVED BY A HEARING WHICH IS MANDATED. MCCOY V. STATE 401 S.C. 363, 737 SE 2d 625 (2013), THESE ALLEGATIONS ALLEGED CAN NOT CONCLUSIVELY BE REFUTED BY A RECORD SHAPER V. STATE 305 SE 2d 247. IN PETITIONER'S P.C.R. APPLICATION THE PETITIONER ALLEGED THAT HE DISCOVERED NEWLY AFTER DISCOVERED EVIDENCE THAT THE STATE WITNESS HAD SHOT HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE WHICH CAUSED BRAIN DAMAGE TO THE VICTIM'S BRAIN. SEE EXHIBIT ( ). THAT THE EVIDENCE IS EXCUIPATORY STATE V. FORNEY 321 S.C. 353, 468 SE 2d 641. EXCUIPATORY EVIDENCE IS THAT WHICH CREATES A REASONABLE DOUBT ABOUT A DEFENDANT'S GUILT. STATE V. SPANN 513 SE 2d 98, UNDER SPANN, IN ORDER FOR AN APPLICANT TO PREVAIL ON A NEW TRIAL HE MUST SHOW THAT THE NEWLY AFTER DISCOVERED EVIDENCE IS (1). SUCH THAT IT WOULD PROBABLY CHANGE THE RESULT IF A NEW TRIAL WERE GRANTED. (2). HAS BEEN DISCOVERED SINCE TRIAL (3). COULD NOT

IN THE EXERCISE OF DUE DILIGENCE HAVE BEEN DISCOVERED PRIOR TO TRIAL (4), IS MATERIAL AND (5), IS NOT MERELY CUMULATIVE OR IMPEACHING. IN PETITIONER'S RESPONSE HE SHOWED THE P.C.R. COURT THAT IF AN EVIDENTIARY HEARING WAS GRANTED HE COULD MEET THEM REQUIREMENTS, AND THAT UNDER BRADY V. MARYLAND 373 U.S. 83, 83 S. CT. 11194, HE COULD PREVAIL ON THE CLAIM BY SHOWING THE COURT (1) THE EVIDENCE WAS FAVORABLE TO HIM, (2), IT WAS IN THE POSSESSION OF OR KNOWN TO THE PROSECUTION, (3), IT WAS SUPPRESSED BY THE PROSECUTION, AND (4), IT WAS MATERIAL TO GUILT OR PUNISHMENT. THIS RULE ALSO APPLIES TO IMPEACHING EVIDENCE OR EXCULPATORY EVIDENCE, WHICH RENDER HIS GUILTY PLEA INVOLUNTARILY ENTER. GIBSON V. STATE 514 SE 2d 320, PETITIONER PRESENTED TO THE P.C.R. COURT IN HIS P.C.R. APPLICATION, RESPONSE TO THE RESPONDENT'S MOTION TO DISMISS AND AT THE HEARING HELD ON DECEMBER 19<sup>TH</sup>, 2013 THAT HAD HE WOULD OF KNOWN OF THAT EXCULPATORY EVIDENCE HE WOULD NOT HAVE PLEADED GUILTY TO THEM CHARGES, BUT WOULD HAVE STOOD TRIAL. GIBSON SUPRA. DUE TO THE ALLEGATIONS PRESENTED WITH THE EVIDENCE THE CREDIBILITY OF THE NEWLY AFTER DISCOVERED EVIDENCE IS ONLY FOR THE TRIAL COURT TO DETERMINE. STATE V. HARRIS 391 S.C. 539, JOHNSON V. CATOE 345 S.C. 389 (2001) STATE V. SPANN 513 SE 2d. 98 (1999). WHICH DENYING PETITIONER TO AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL WAS A ABUSE OF THE P.C.R. COURT DISCRETION. STATE V. EDENS 290 SE 2d 116. ESPECIALLY WHEN PETITIONER SHOWN THE P.C.R. COURT THAT UNDER S.C. CODE ANN §17-27-45 (C) HE WAS ENTITLED TO AN HEARING BECAUSE HE HAD JUST DISCOVERED THE NEWLY

AFTER DISCOVERED EVIDENCE AND THAT IT WAS NO WAY POSSIBLE THAT HIM NOR HIS TRIAL ATTORNEY COULD HAVE DISCOVERED THE EVIDENCE PRIOR TO THE PLEA HEARING BECAUSE 1), THE PROSECUTION WITHHELD THE LEAD TO THE EXCULPATORY EVIDENCE AND 2), THE VICTIM'S MEDICAL RECORDS ARE CONFIDENTIAL PURSUANT TO S.C. CODE ANN § 44-115-20, 44-44-80 AND 44-6-180 WHICH SHOWN THE P.C.R. COURT HIS MOTION FOR NEW TRIAL WAS TIMELY FILED. PURSUANT TO S.C. CODE ANN § 17-27-45 (C) COATS V. STATE 575 S.E. 2d 557 (S.C. 2003) THE P.C.R. COURT ERRED WHEN IT FAILED TO CONTINUE THE MATTER AND GRANT PETITIONER AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL, THIS VIOLATION DENIED PETITIONER TO THE CHANCE TO PROVE HIS ENTITLEMENT TO RELIEF PURSUANT TO S.C. CODE ANN § 17-27-80 BANNISTER SUPRA WHICH PREJUDICED PETITIONER.

### CONCLUSION

PETITIONER SEEKS WRIT OF CERTIORARI DUE TO THE P.C.R. ERR. OF LAW AND REQUEST UPON THIS COURT TO REVERSE AND REMAND THIS MATTER BACK TO THE LOWER COURT FOR AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL. PIERCE SUPRA.

FOR THE PRECEDING REASONS, PETITIONER RESPECTFULLY ASK THIS COURT TO GRANT HIS PETITION FOR WRIT OF CERTIORARI.

FEBRUARY 28, 2014 .

RESPECTFULLY SUBMITTED  
DARNELL E HUDSON, PETITIONER

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT  
PETITION FOR WRIT OF  
CERTIORARI

CERTIORARI TO GREENVILLE  
COUNTY

THE HON. G EDWARD WILMAKER, CIR CT. JUDGE  
CASE NO.: 2013-CP-23-0993

DARNELL E. HUDSON, ..... PETITIONER

v.

STATE OF SOUTH CAROLINA ..... RESPONDENT

CERTIFICATE OF SERVICE

I CERTIFY THAT A TRUE COPY OF THE PETITION FOR WRIT OF  
CERTIORARI AND A COPY OF THE RECORDS IN THIS CASE HAVE  
BEEN SERVED ON MS. KAREN C. RATIGAN, ESQ THIS 28<sup>TH</sup> DAY OF  
FEBRUARY, 2014.

DARNELL E. HUDSON  
PETITIONER ACTING PRO SE