February 28th, 2014.

Honorable Daniel E. Shearouse
Clerk, Supreme Court South Carolina
Post office Box 11330 Columbia, S.C.
29211

RECEIVED

MAR 07 2014

S.C. SUPREME COURT

Re: Appeal from the judgment of ~~Hampton~~,
2012-CP-23-07208

Dear Mr Shearouse,

I am the Appellant of the above captioned matter. I am not a lawyer. I wish the assistance of counsel.

Enclosed is the Explanation required by rule 243(c) ~~State~~ SCRCP.

Be advised I do not have money for copies. And therefore was not able to provide this to the State.

Mrs Martino at the office of Disciplinary Counsel has additional matters.

Respectfully
Mario Lino

State of South Carolina
County of Greenville

In The Supreme Court
of South Carolina

Mario Ramos Hinojos #R
SCDC No. 301870
Petitioner,

vs.

State of South Carolina,
Respondent.

Explanation
243 (S.C.
SCACR

Case No. 2012-CP-23-07208

Petitioner proceeding Pro Se explicates as follows:

On October 24, 2012, Petitioner filed an Application for Post Conviction Relief (PCR). (enclosed)

On December 7, 2012 Petitioner filed motion for Discovery. Petitioner has wrote to many people seeking the evidence to prove my innocence. (enclosed)

on February 7, 2013 Petitioner filed Motion to Amend Application. (enclosed)

on April 5, 2013 Petitioner filed motion for Default. (Mailed to Julie A. Martino at P.O. Box 12159, Columbia, South Carolina 29211.)

on April 16, 2013 Petitioner filed Motion to Amend Judgment. (enclosed)

On April 30th, 2013 filed a Return and Motion to Dismiss as well as an Order of Dismissal. (enclosed)

On May 7th, 2013, the Honorable O. Garrison Hill ordered Petitioner to give specific reasons, factual or legal, why it should not dismiss the matter.

On May 15, 2013, Petitioner filed a Reply (enclosed)

On June 6, 2013 Petitioner explained to the Court the denial of access to the Courts. Petitioner currently has a pending law suit Hayes Vs. SCDC Cit No. 2:13-cv-0900-JFA-BHH. (enclosed)

Petitioner would ask the Court to please bare with him he is not a lawyer yet the "explanation must contain sufficient facts, arguments and citation to legal authority to show there is an arguable basis." 243 (c)

Petitioner pleads the Court to please review the proceedings for they themselfs explain alot.

Authority and Citation

The Federal Constitution imposes on the States no obligation to provide appellate review of Criminal convictions, McKane v. Durston, 153 U.S. 684, 14 S.Ct. 913, 38 L.Ed. 2d 867 (1894). Having provided such an avenue, however, a state may not "bolt the door to equal justice" to indigent defendants, Griffin v. Illinois, 351 U.S. 12, 24, 76 S.Ct. 585, 100 L.Ed. 891 (1956), nor discriminate against Criminal defendants whom have little education, learning disabilities, and mental impairments who are particularly handicapped as self-representatives, Kowalski v. Tesmer, 543 U.S. —, — 125 S.Ct. 564, 160 L.Ed. 2d 811 (1963), relied on Griffin's reasoning to hold that, in first appeals as of right, States must appoint counsel to represent indigent defendants, 372 U.S., at 357, 83 S.Ct. 814. Ross v. Moffitt, 417 U.S. 600, 94 S.Ct. 2437, 41 L.Ed. 2d 341, held, however, that a State need not appoint Counsel to aid a pro persen in discretionary appeals to the United State's highest Supreme Court, 417 U.S., at 610-612, 615-618, 94 S.Ct. 2437.

Later, this same united States supreme Court stated in Martinez v. Ryan, 132 S.Ct. 1309, at 1318, that "By [the state] deliberately choosing to move trial ineffectiveness Claims out side of the direct-appeal process, where counsel is Constitutionally,

guaranteed, the State significantly diminishes prisoner's ability to file such claims."

Although the Court recognized the extreme difficulties of a poor layperson bringing an ineffective-assistance-of-trial-counsel claim, it deviated from the reason why Certiorari was granted, of, whether a defendant in a state criminal case who is prohibited by state law from raising on direct appeal any claim of ineffective assistance of trial counsel, but who has a state-law right to raise such a claim in a first post-conviction proceeding, has a federal constitutional right to effective assistance of first post-conviction counsel specifically with respect to his ineffective-assistance-of-trial-counsel claim, the Court likewise declined to address that question.

Begining with Griffin v. Illinois, supra, where it was held that equal justice was not afforded an indigent appellant where the nature of the review depends on the amount of money he has' at 19, 76 S.Ct. at 591, and continuing through Douglas v. California, supra, the Court has consistently held invalid those procedures where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshaling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is, without merit, is forced to shift for himself. At 358, 83 S.Ct. 817.

Thus Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799, established the basic right to counsel. "Appointment of Counsel for an indigent is required at every stage of a criminal

proceeding where substantial right of a criminal may be affected. Mempa V. Rhay, 389 U.S. 128, 88 S.Ct. 254, 257, 19 L.Ed. 2d 336 (1967). Such cases as Escobedo V. Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed. 2d 977 (1964), Miranda V. Arizona, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed. 2d 694 (1966), United States V. Wade, 388 U.S. 218, 87 S.Ct. 1926, L.Ed. 2d 1149 (1967) and Gilbert V. California, 388 U.S. 263, 87 S.Ct. 1951, 18 L.Ed. 2d 1178 (1967), Mark the begining point when the right to counsel comes into being. Once the right has matured, the law is now certain that it continues through the conclusion of appellate review, Douglas V. California, Supra. And where the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on a request. Carnley V. Cochran, 369 U.S. 506, 82 S.Ct. 884, 889, 8 L.Ed. 2d 70 (1962); Ruckett V. North Carolina, 343 F.2d 462 (4th Cir 1965). Even if Counsel appointed to conduct an appeal concludes that the appeal is frivolous and desires to withdraw he must, nevertheless, brief anything in the record which might arguably support the appeal; and if the court finds any legal point arguable on its merits, it must, prior to decision, provide another attorney, Anders V. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 2d 493 (1967)

In Strickland V. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984). The Court held that criminal defendants have a Sixth Amendment right to "reasonably effective" legal assistance, id., at 687, 104 S.Ct. 2052, and announced a now-familiar test: A defendant claiming ineffective assistance of counsel must show (1) that counsel's representation "fell below an objective

Standard of reasonableness," id., at 688, 104 S.Ct. 2052, and (2) that counsel's deficient performance prejudiced the defendant, id., at 694, 104 S.Ct. 2052.

In most cases, a defendant's claim of ineffective assistance of counsel involves counsel's performance during the course of a legal proceeding, either at trial or an appeal. In such circumstances whether a court requires the defendant to show actual prejudice - "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different," Strickland, 466 U.S., at 694, 104 S.Ct. 2052 - or whether the court instead presume prejudice turns on the magnitude of the deprivation of the right to effective assistance of counsel. That is because "the right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial," United States V. Cronic, 466 U.S. 648, 649-650, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984), or a fair [redacted] appeal, see Penson V. Ohio, 488 U.S. 75, 88-89, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988). "Absent some effect of challenged conduct on the reliability of the... process, the [effective counsel] guarantee is generally not implicated." Cronic, supra, at 658, 104 S.Ct. 2039.

In the present case, however, the defendant alleges not that counsel made specific errors in the course of representation, but rather that during the judicial proceeding he was - either actually or constructively - denied the assistanc of counsel altogether. "The presumption that counsel's assistance is essential requires [the court] to conclude that a trial is unfair if the accused is

denied counsel at a critical stage." Cronic, supra, at 659, 104 S.Ct. 2039. The same is true on appeal. See Penson, supra, at 88, 109 S.Ct. 346. Under such circumstances, "no specific showing of prejudice [is] required" because "the adversay process itself [is] presumptively unreliable" Cronic, supra, at 659, 104 S.Ct. 2039; Penson, supra, at 88-89, 109 S.Ct. 346 (complete denial of counsel on appeal requires a presumption of prejudice).

The Applicant, in all actuality, was deprived of the effective assistance of counsel at the closing argument and jury instruction stages of his trial, when counsel failed to objeect to the prosecutor's closing argument which gave a mandatory presumption of malice, by telling the jury all that was needed to convict the defendant was the fact that he used a gun and automatically made it murder. The solicitor made the statement three times, which, nonetheless, bolstered the judge's jury intruction of malice, which trial counsel also failed to objeect to. Manslaughter, being an option for the jury was decimated by the mandatory presumption of murder deriving from the use of a pistol precluded manslaughter as a verdict rendering the proceeding unfair and a definite complete denial to have a jury come to their own determination impartially without the influence of the prosecutor or the trial judge.

The supreme court of South Carolina held in Carter V. State, 301 S.C. 396, 392 S.E.2d 184 (1990), that the harmless error analysis is inappropriate where, as here, there is evidence from which the jury could find the defendant guilty of the

lessor offense of Voluntary Manslaughter. Voluntary manslaughter is expressly defined as "the unlawful killing of another <u>without</u> malice, S.C. Code Ann. § 16-3-50 (1985)(Emphasis supplied), so that a charge creating a mandatory presumption of malice precludes manslaughter, clearly prejudicing the Applicant.

The prosecutor's closing argument along with the Judge's jury charge are apparent on the face of the record and it being obvious trial counsel was ineffective for failing to object to trial errors that clearly obliterated his entire trial strategy. The defendant now convicted and the proceedings moved on to direct-review, appellate counsel has the express duty to research the record. Once redizing the record is devoid of any meritorious claims for review he should also have the duty to advise of Post-Conviction Relief and assisting the defendant in securing appellate review of his trial counsel's defficient performance.

On October 21, 2011, in Applicant's original Application he submitted a document into evidence with this Court that was a letter from his appellate counsel where counsel clearly stated he did not advise Applicant of his trial counsel being ineffective because he would not know, but Applicant here today has shown a bona fide, per se, evident ineffective assistance of trial counsel claim. Appellate Counsel was therefore ineffective as well for not consulting with the Applicant and assisting him in securing his first appeal of ineffective assistance of trial counsel, rendering the entire judicial proceeding fundamentally unfair. Applicants first PCR was dismissed without

the appointment of counsel, without a hearing and with prejudice.

In order for an indigent layperson to prosecute a Strickland violation the State of South Carolina has enacted a specific process entitled the Uniform Post-Conviction Procedure Act, S.C. Code Ann §§ 17-27-10 to 160, which, effectively is the first appeal, as of right, to argue the most essential Constitutional guaranty a criminal defendant can ever posses. For if counsel at trial is grossly ineffective for not perserving errors of the law for appellate review, which appellate counsel would be barred from raising, and appellate counsel has no constitutional obligation to research for trial ineffectiveness claims, advise of the possibility of PCR and assist their client in filing the application it will most often result in the forfeiture of an unknown right. To say a criminal defendant does not have a right to PCR would be no more than saying a prisoner has no right at all to the effective assistance at the trial which convicted him because in the State of South Carolina PCR is the only place a criminal whom convicted, can argue his Sixth Amendment United States Constitutional right.

In the united States of America a criminal defendant's right to the effective assistance of counsel is a structural guarantee, which foundation should never be cracked by a State's labyrinthine procedures that dismantles the appointment of counsel for an indigent layperson, see Aice V. State 303 S.C. 448, 409 S.E. 2d 392 (S.C. 1991) Relying on Pennsylvania V. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed. 2d 539, holding

prisoner has no equal protection or due process right to appointed counsel in post conviction proceedings, and therefore no right to the effective assistance of counsel.

The ruling in Aice, supra, and Finley, supra, are completely unconstitutional. The Uniform Post-Conviction Procedure Act is the first and **Only designated** proceeding which will rule on the merits of an ineffective of trial or appeal counsel claim, no other court will entertain those claims without first being before the State court. The supreme Court of South Caroling, with the Chief Justice Jean Toal delivering the opinion of the Court, has deem the Act a right. See Wilson v. State, 348 S.C. 215, 559 S.E. 2d 581. "A defendant has the procedural right to one fair "bite at the apple." That is, every defendant has a right to file a direct appeal and one PCR application," insomuch, that the State has elected to make Post-Conviction a "right", then Douglas v. California, supra, must be applied because it is the first appeal as of right to the ineffective assistance of trial Counsel claims and the right to counsel on first appeal of right is a "meaningless ritual" if it does not amount ~~to~~ to the effective assistance of Counsel. See Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821; Coleman v. Thompson, — U.S. —, 111 S.Ct. 2546, 2568 (1991)

A defendant's right to counsel under the Sixth Amendment, as made applicable to the States by the Fourteenth Amendment, in terms of due process, standing alone, in terms of the equal protection clause of the Fourteenth Amendment, or in terms

of a combination of these, the recent trend of decisions makes clear that every defendant has the unqualified right, whether or not indigent, to be represented by counsel at all critical stages of any prosecution against him. The right begins when the accusatorial process begins as to him. And where the States, which are not under the obligation to provide for appellate review, do provide for appellate review, his right to counsel continues through that stage of the proceedings and he must be afforded full resort to that review and to the documents and tools of appellate review, the same as if he were not indigent. Where counsel is clearly required at trial and in certain instances even before the formalities leading to trial have begun and where counsel is clearly required on appeal when provisions for an appeal have been enacted, the Court thinks that counsel is also required in the hiatus between the termination of trial and the begining of an appeal in order that a defendant know that he has the right to appeal, how to initiate an appeal and whether, in the opinion of counsel, an appeal is indicated. Likewise the interim between direct-appeal and post-conviction is a critical, crucial stage for defendant's whom wish to enforce their Sixth Amendment right to counsel and therefore the Sixth Amendment right to counsel should apply, because it is the only place to enforce the Federal right to counsel, and poor laymen must make decisions which may make the difference between freedom and incarceration.

The South Carolina Supreme Court Rules 50 (5) and

71.1(d) Makes Mandatory, that post conviction attorney's Make sure that all available grounds are raised in Post Conviction proceedings. After filing a pro se post conviction application, and after being given Court appointed Counsel, a pro se litigant cannot thereafter file any further pleadings, and any amendments to his application must be made by Counsel State v. Sanders, 269 S.C. 215, 237 S.E. 2d 63 (1977); Foster v. State, 298 S.C. 306, 379 S.E. 2d 907 (1989).

Thus, if post conviction Counsel does not amend the pro se application, the Applicant has no way to have all supporting grounds heard and open the gates for the State, who appoint Counsel, effectively deny Applicant Counsel through the Court. Creating an unfair process.

Since State v. Carpenter, 277 S.C. 309, 286 S.E. 2d 384 (1982) and State v. Kornahrens, 290 S.C. 281, 350 S.E. 2d 180 (1986), prohibits South Carolina litigants from Claims of ineffective assistance of trial Counsel during their initial direct appeals as of right on that particular Claim. The South Carolina Supreme Courts decision in Aice v. State — S.C. —, 409 S.E. 2d 392 (1991), holding that there is no constitutional right to Counsel in state post proceedings is based on a far stretched reading of the Supreme Court decision in Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed. 2d 539 (1987). The decision in Finely, literely held that there is no constitutional right to Counsel in State Court discretionary appeals after the appellate stage has been exhausted. Id. 107 S.Ct. at

1993, 1994.

Because the claim of ineffective assistance of counsel cannot be exhausted until an application for post conviction relief is filed, south carolina litigants clearly have a right to effective assistance of trial counsel. Cf. Evitts v. Lucey 469 U.S. 387, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985); Coleman v. Thompson, — U.S. —, 111 S.Ct. 2546, 2568 (1991). As a result, when an applicant is not assisted by a post conviction attorney in setting forth all grounds to support his claim of ineffective assistance of trial counsel to support his claim of ineffective assistance of trial counsel in his initial application, he or she should not be barred thereafter from submitting a second application to include additional grounds for a courts review.

In Carter v. State, 293 S.C. 528, 362 S.E. 2d 20 (1987) and again in Aice, supra, the South Carolina Supreme Court cited Foxworth v. State, 275 S.C. 615, 274 S.E. 2d 415 (1981); Land v. State, 274 S.C. 243, 262 S.E. 2d 415 (1981); and S.C. Code Ann § 17-27-90 for the general proposition, that the applicant has the burden of showing that a new ground for relief could not have been raised in a previous application. However, Aice, Supra, does not give attention to the Courts decision in Case v. State, 277 S.C. 474, 289 S.E. 2d 413 (1982), which held that if the applicant meets the burden a hearing must be afforded despite the successiveness of the application. The facts in Case, established that

~~Had~~ Case had no attorney in his first application, and that it was highly doubtful whether, in point of fact, that he could have raised the appropriate arguments, Ace, Supra, Id. 409 S.E.2d at 394.

This is the same as in Petitioner's case and had he been appointed competent counsel he would have seen that the State's contentions that the Supreme Court found "Appellate Counsel did not have to advise their Client's of PCR remedies" was abrogated in Lawrence v. Brett, 2007 WL 2386660, where the Court rejected the States argument that in Sutton v. State, 361 S.C. 644, 606 S.E. 2d 779 (2004) (held neither trial nor the appellate Counsel had obligation to inform defendant of post-conviction remedies or of one year limitations period governing [Applications], finding that Sutton had been abrogated by Bray v. State, 366 S.C. 137, 620 S.E. 2d 743 (2005) (per curiam)

Now because PCR Counsel's unwillingness to present particular arguments that have been laid out before him at the appellants request functions not only to abridge defendant's right to counsel on appeal, but also to limit the defendants constitutional right of equal access to the

appellate process. Thus, the attorney, by refusing to carry out his Clients express wishes, cannot forever foreclose review of nontrivolous Constitutional Claims.

The Court as well as Counsel was aware of the State's waiver of the defenses of Statute of Limitations and Successiveness for Failing to assert them timely. Petitioner has been requesting for a Rule 3.9(a) so that the Final order will reflect a complete record.

Petitioner only seeks an evidentiary hearing to show he is entitled to a new trial.

Petitioner Claims at the least he is entitled to an Austin Hearing to determine if he truely relenquished his right to appeal his first PCR application Voluntarily where he was not appointed Counsel and had a hard time receiving the Rules of Courts to know what to do.

I just hope I am presenting this right and really want the Court to at least hear all my grounds for relief I truely do believe it would be right to give me the hearing because had I known about PCR in a timely

Manner I would have been received the proper adjudication on the merits of my claims.

Petitioner ask for the appointment of counsel to help me get all the transcript and copies of documents.

Petitioner has asked her counsel to filed a Rule 60(b)(3) motion which authorizes the Circuit Court to relieve a party from a final judgment where the party demonstrates "fraud, misrepresentation, or other misconduct of an adverse party." At a hearing on August 30th 2013 her Default the State cited Kneece V. State, Cite unknown. a 1974 case. This case is way outdated and inconsistent with the legislatures intentions of Rule 55(c) which the Applicant very well complied with in his Motion for Judgment By Default filed April 5, 2013 in the Greenville Court of Common Pleas which sets out all grounds for relief in the form of a brief and the Petitioner is unable to make Copies.

Whereby Petitioner request the Court to remand to the lower court for an evidentiary hearing and for the lower court finds counsel was indeed ineffective to reverse the conviction and remand for a new trial.

Respectfully
Mario Angeles

Mario Angeles
Lee CI SMU-D99
990 Wisacky Hwy.
Bishopville SC
29010

Bishopville
South Carolina
February 28, 2014.