

FORM 5

STATE OF SOUTH CAROLINA)
 County of Greenville)
MARIO RAMOS HINOJOS)
 Full name and prison number (if any) of Applicant)
301870)
 v.)
 County of Greenville)
 State of South Carolina)

IN THE COURT OF COMMON PLEAS

CLERK OF COURT
 GREENVILLE CO. S.C.
 100 P. WINGFIELD
 GREENVILLE, SC 29601
 2012 NOV 14 PM 4:44

APPLICATION FOR POST-CONVICTION RELIEF

2012-CP-23-07208

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee C/I 990 wisacky Hwy Bishopville
SC 29010
2. Name and location of Court which imposed sentence Greenville County
Court of General Session.
3. Name(s) of co-defendant(s) (if any) Robert Joel Smith
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2003-15-23-2931
 (b) 2003-15-23-2944

(c) 2003-GS-23-2977

5. The date upon which sentence was imposed and the terms of the sentence:

(a) May 12 2004 Murder life

(b) May 12 2004 Murde life

(c) May 12 2004 Assault Battery w/intent 20 years

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. SC Supreme Court

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. April 17 2007

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. NA

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) NA

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) United States Constitutional rights violation

(b) SC Constitutional Rights violation

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Ineffective Assistance, Prosecutorial mis conduct see Attachment

(b) Ineffective Assistance, Prosecutorial misconduct see Attachment

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Filed PCR

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. Greenville County Court House of General sessions

ii. _____

iii. _____

iv. _____

- (c) the disposition thereof:
 - i. Denied Barred by statute of limitations
 - ii. _____
 - iii. _____
 - iv. _____

- (d) the date of each such disposition:
 - i. October 18th 2011
 - ii. _____
 - iii. _____
 - iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. NA
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____

- (b) the proceedings in which each ground was raised:
 - i. PCR Denied Barred by statute of limitations
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Newly discovered Evidence
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Thomas J. Quim 600 E Washington St, Suite 620
Greenville, SC 29601
 - ii. Robert M. Dudek Po Box 11589, Columbia SC
29211-1589
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. (b) (c)
 - ii. (d)
 - iii. _____

19. State clearly the relief you seek in filing this application:

My conviction vacated, or reversed and
remanded. I seek a trial Attorney to handle
my PCR And/or an Austin review

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Mario Ramos Hingos JR, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Mario Hingos

SWORN to and subscribed before me this 22
day of Oct 2012.

Delma Siro (L.S.)
Notary Public

My Commission Expires: 11-4-2015

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT.
IN SUPPORT THEREOF

I, Mario Hingos JR, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Mario Hingos
Applicant

SWORN or affirmed to and subscribed before me this

22 day of Oct, 2012.

Debra Seno
Notary Public

My Commission Expires: 11-4-2015

11. (a) Errant jury Instructions, subject matter jurisdiction, Miscarriage of justice and First P.C.R. judge erred and any Amendments made by appointed Counsel.

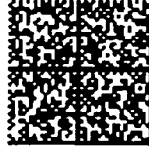
(b) Errant jury Instructions, subject matter jurisdiction, Miscarriage of justice, First P.C.R. judge erred and any Amendments made by appointed Counsel.

Mario Hingos 301870
-ee C/I smu-s-184
'90 wisacky Hwy.
Bishopville SC 29010

2012-CP-23-07208

SC 290

OCT 2012
PM 21



02 1M
0004261422 OCT 25 2012
MAILED FROM ZIP CODE 29010

\$ 00.65⁰

Paul B Wickensimer
Greenville County Clerk of Court
305 East North Street
Greenville, SC 29601

29601219099

State of South Carolina
 County of Greenville
 Mario Ramos Hinojos 301870
 Applicant
 V.
 County of Greenville
 State of South Carolina
 Respondent

In The Court of Common Pleas

Motion for Discovery

Case # 2012-CP-23 07208

(Indictment numbers)	Arrest Warrant
2003-GS-23-2931	H-149199
2003-GS-23-2944	H-149199
2003-GS-23-2977	H-149200

2012 DEC - 7 PM 2:26

FILED-CLERK OF COURT
 GREENVILLE, S.C.
 PAUL B. WICKENS/MSH

Applicant, Mario R. Hinojos, hereby moves pursuant to S.C. Code Ann. § 17-27-150, for leave to conduct discovery in this Post-Conviction Relief action. In support of this motion, Applicant apprises the Court of the following findings of facts and legal principles:

1. Applicant is presently serving a life sentence for murder, murder, and A.B.W.I.K.. Said sentence was imposed on ~~September~~ May 12th 2004 by the Greenville County Court of General Sessions following a plea of not guilty.

2. S.C. Code Annotated § 17-27-150 specifically authorizes discovery in non-capital Post-conviction Relief proceedings upon a showing of good cause. A party in a non-capital P.C.R. proceeding shall be entitled to invoke the process of discovery available under the South Carolina Rules of Civil Procedures.

3. Applicant submits that good cause exists for the authorization of discovery in this matter as follows:

- A) Use of Discovery materials will expedite preparation for the evidentiary hearing, therefore, saving time, as well as state resources.
- B) Permitting Discovery will substantially reduce the likelihood that a last minute continuance of the Post-Conviction Relief proceeding in this matter will be necessary.
- C) Discovery will permit Applicant to obtain necessary information through means other than Court proceedings such as depositions, affidavits, and documents produced by the prosecuting agencies. Therefore, valuable Court time can be used to present only relevant material and witnesses obtained through these sources.
- D) If discovery is not authorized, Applicant will have no option but to pursue the information and materials he seeks to discover by subpoenaing individuals and files to be produced at the P.C.R. hearing. It bears emphasis that Applicant does not intend to seek discovery of any materials or information to which he could not gain access by compelling the appearance of witnesses or records custodians at the P.C.R. hearing. Rather, Applicant seeks to invoke discovery simply as a means of obtaining and reviewing that information before Court convenes a hearing on the merits of Applicant's grounds for relief. By doing so, Applicant will be able to separate the relevant from the irrelevant, conduct any necessary follow-up to said information, be sure any Brady claims are true and factual and streamline his factual presentation without expending the scarce judicial resources and time that would be consumed if Applicant were forced to wait until the

11-25-12

P. 3 of 3

evidentiary hearing before being permitted access to the information sought by Applicant such as: Police reports or the non-existence thereof. If forced to rely on the latter method, Applicant will almost certainly require additional time for investigation after gaining access to said information. This will, in turn, require a continuance of the PCR proceedings, rather than allowing all of the facts supporting Applicant's claims for relief to be presented at a single evidentiary hearing.

Wherefore, for all reasons as set forth more fully above, Applicant submits that he has presented good cause for the invocation of discovery in this matter, and therefore, respectfully request, pursuant to § 17-27-150, that this Honorable Court authorize Applicant to conduct discovery as prescribed by the South Carolina Rules of Civil Procedure.

Respectfully Submitted,
Mario Hinojos
Mario R. Hinojos JR
Date: November 25th 2012

(11-15-12)
SCDC Staff Refused to
notarize motion

Sworn to before me this
_____ Day of _____, 2012
Notary Public of South Carolina
My Commission expires: _____

Certificate of Service

I, Marco Hingjos, do hereby certify that I have sent the foregoing letter dated December 9, 2013, by personally depositing same in the institutional mail box address to the person indicated below this 9th day of December 9, 2013:

Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 East North St.
Greenville, S.C. 29601

Marco Hingjos

Marco Hingjos 301870
Lee Ct SMU-N-99
990 W. Sackly Hwy.
Bishopville, S.C.
29010

Bishopville
South Carolina
Dec. 9, 2013



**Department of Public Safety
Records Management Services Division**

**Jinny Moran, Captain
County Records Manager
jmoran@greenvillecounty.org
(864) 467-5211
www.greenvillecounty.org**

November 16, 2012

Mario Hinojos #301870
Lee C/I SMU-S-184
990 Wisacky Highway
Bishopville, SC 29010

Dear Mr. Hinojos,

You will need to write the Greenville County Sheriff's Office to request this report under the Freedom of Information Act. I have listed below the address for you to send the request to:

Lt. Michael Hildebrand
Greenville County Sheriff's Office
4 Mc Gee Street
Greenville, SC 29601

Sincerely,

A. Farrell
Records Supervisor

cc: Captain Moran



Sheriff

Steve Loftis
Greenville County Sheriff's Office

December 10, 2012

Mr. Mario Hinojos Jr. 301870
Lee Correctional Institution SMU-S-184
990 Whiskey Hwy.
Bishopville, SC 29010

Re: Freedom of Information Act Request
Greenville County Case No. #01-2002-099003

Dear Sir:

Your Freedom of Information Act request dated November 27, 2012 was received by the Greenville County Sheriff's Office on December 3, 2012 and forwarded to me for follow-up and reply.

The records of state and local governments and agencies in South Carolina are governed by the South Carolina Freedom of Information Act (1998 Act No. 423, Section 1; also referred to as FOIA) from which the following statute is taken:

SECTION 30-4-30. Right to inspect or copy public records; fees; notification as to public availability of records; presumption upon failure to give notice; records to be available when requestor appears in person.

(b) The public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document. However, members of the General Assembly may receive copies of records or documents at no charge from public bodies when their request relates to their legislative duties. The records must be furnished at the lowest possible cost to the person requesting the records. Records must be provided in a form that is both convenient and practical for use by the person requesting copies of the records concerned, if it is equally convenient for the public body to provide the records in this form. Documents may be furnished when appropriate without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Fees may not be charged for examination and review to determine if the documents are subject to disclosure. Nothing in this chapter prevents the custodian of the public



An Accredited Law Enforcement Agency

4 McGee Street, Greenville, SC 29601 / (864) 467-5280 / Fax (864) 467-5299 Email: sloftis@greenvillecounty.org

records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.

(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefore. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record and, if the request is granted, the record must be furnished or made available for inspection or copying. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.(sic.)

The FOIA permits certain exemptions from the records. Information of a personal nature that could be seen as an unreasonable invasion of privacy or that may endanger a person will be redacted in accordance with §30-4-40(2) & (3).

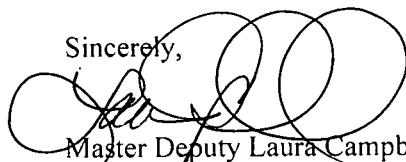
Photographs are not maintained as a part of a case file, and are maintained by the Greenville County Department of Public Safety Forensic Division. These photographs may be exempt under § 30-4-40 (18). Please direct any FOIA request in regard to photographs to that agency.

Additionally, the evidence in this case is not public record as defined by §§ 30-4- 30(d) and 30-4-50 (a-b). Therefore, the evidence in this case which is sealed and in storage, will not be made available.

As a public body as defined by the Act and in accordance with § 30-4-30 (b), a reasonable fee will be charged for making the records available. The fee for the research and preparation of records is \$20.00 per hour, 10 cents per page, and/or \$2.00 for each CD. In fulfillment of your request, the fee is \$132.30. The requested record, subject to the abovementioned exemptions, will be sent to you as soon as payment of the fee is received in check or money order.

As provided under the Freedom of Information Act; this response is not offered as a sworn affidavit, is non-testimonial, is not a tacit admission of any other perceived fact, and not subject to a penalty for perjury. This response to your request is in no way or form intended, nor can this be construed as anything other than a determination and notice as to the availability of the requested public records as required by the FOIA.

Sincerely,



Master Deputy Laura Campbell
Public Information Officer
Greenville County Sheriff's Office (SC)

Greenville County Sheriff's Office
Administrative Services Division

FOIA Invoice

To: Mr. Mario Hinojos Jr. 301870
Lee Correctional Institution SMU-S-184
990 Whiskey Hwy.
Bishopville, SC 29010

123 – Copied pages of record	\$12.30
6.0 – Research hours	\$120.00
<hr/>	
Total Due:	\$123.30

Please promptly remit payment (via check or money order) to:

Greenville County Sheriff's Office
Attn: M.D. Laura Campbell
4 McGee Street
Greenville, SC 29601

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

December 17, 2012

Mr. Mario Hinojos, #301820
Lee C.I., SMU-S-184
990 Wisacky Highway
Bishopville, SC 29010

RE: Freedom of Information Act Request #2012-0700

Dear Mr. Hinojos:

The above referenced file concerning your case has been copied and reviewed. Please find listed below a breakdown of the charges associated with your request.

21 pages @ \$0.30 each	-	\$ 6.30
One Hour Research & Copying Time	-	<u>20.00</u>
TOTAL	-	\$26.30

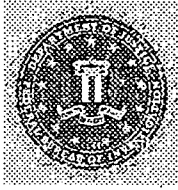
All fees need to be paid by check or money order and made payable to the State Law Enforcement Division. Address the envelope to **SLED FOIA Processing, P.O. Box 21398, Columbia, SC 29221-1398**. Please include the request number **2012-0700**. Upon receipt of payment, the file will be forwarded to you.

Sincerely,

Agent Thomas Berry
Freedom of Information Coordinator

FOI#2012-0700





Federal Bureau of Investigation
Washington, D.C. 20535

November 30, 2012

MARIO RAMOS HINOJOS, JR
**301870
LEE CORRECTIONAL INSTITUTE
SMU-S-184
990 WISACKY HIGHWAY
BISHOPVILLE, SC 29010

FOIPA Request No.: 1199360-000
Subject: HINOJOS, MARIO RAMOS, JR

Dear Mr. Hinojos:

This acknowledges receipt of your Freedom of Information/Privacy Acts (FOIPA) request to the FBI.

- Your request has been received at FBI Headquarters for processing.
- Your request has been received at the [_____ Resident Agency / _____ Field Office] and forwarded to FBI Headquarters for processing.
- We are searching the indices to our Central Records System for the information responsive to this request. You will be informed of the results in future correspondence.
- Your request for a fee waiver is being considered and you will be advised of the decision at a later date.
- Please check for the status of your FOIPA request at www.fbi.gov/foia.

The FOIPA Request number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

Sincerely,

David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

[Faint, mostly illegible text at the bottom of the page, possibly a routing slip or administrative notes.]

Mario R. Hingjos 301870
Applicant,
V.

State of South Carolina
Respondent,

In The Court of Common Pleas

Motion To Amend
Application For
Post-Conviction Relief

CA. No. 2012-CP-23-07808

2013 FEB 17 10:32

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS/SHEN

Applicant would like to move the Court to make the following amendments to his PCR Application filed Nov. 14th.

Questions and Amendments.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Due Process, Ineffective Assistance of trial Counsel, Prosecutorial Misconduct, Ineffective Assistance of Appellate Counsel, Errant Jury Instructions, Illegal search and seizures, Subject matter jurisdiction, Miranda Violation, Brady violation, Miscarriage of Justice and First PCR Judge erred/any amendments made by appointed Counsel.

(b) Due Process, Ineffective Assistance of trial Counsel, Prosecutorial Misconduct, Ineffective Assistance of Appellate Counsel, Errant Jury Instructions, Illegal search and seizure,

Subject Matter Jurisdiction, Miranda violation, Brady violation, Miscarriage of Justice, and First PCR judge erred/any amendments made by appointed Counsel.

Question and Amendment.

15. If you answered "yes" to (14) identify:

(a) Which grounds have been presented:

i. Ineffective assistance of trial counsel:

(a) Failed to conduct proper pre-trial investigation.

(b) Failed to challenge the voluntariness of the Applicant's statement at the Jackson v. Denno hearing.

(c) Failed to object to malice charge.

(d) Attempted to persuade the Applicant to lie on the stand.

ii. Illegal search and seizure:

(a) Lack of probable cause

iii. Ineffective assistance of appellate counsel:

(a) Failed to explain PCR.

Question and amendment

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground

P. 3 of 4

and state concisely the reasons why such ground has not previously been presented:

(a) Ineffective Assistance of Trial Counsel.

i. Counsel failed to motion to quash indictment. Lack of adequate access to the law library.

ii. Counsel failed to motion for a mental and psychiatric evaluation/ competency hearing. Lack of adequate access to the law library.

iii. Counsel refused to allow Applicant to assist in his own defense by refusing to allow Applicant access to his motion of discovery. Lack of adequate access to the law library.

iv. Counsel failed to object to prosecutor's closing argument where some parts were based off his opinion and not the facts of the case, some parts appealed to the passion and prejudice of jury and other parts gave a misconception of the law that created a burden-shifting presumption. Lack of adequate access to the law library.

(b) Prosecutorial Misconduct

i. The prosecutor made several inflammatory and prejudicial remarks in his closing argument. Lack of adequate access to the law library.

ii. The prosecutor withheld impeaching and exculpatory evidence material to Applicant's guilt or innocence. Lack of adequate access to the law library. Newly discovered Evidence.

(c) Subject Matter Jurisdiction.

i. Applicant claims the court lacked subject matter jurisdiction

1-13-2013

Pg. 4 of 4

to trial his on the grounds the indictments was secured with evidence that was fraudulent and "fruit of a poisonous tree", also the fact that the sole witness who went before the grand jury was the lead investigator Paul Silvaggio who also presented fraudulent evidence to the magistrate to secure an arrest warrant therefore the indictments themselves would also be fraudulent. Lack of access to an adequate law library.

(d) Miscarriage of justice.

i. Applicant claims to be "Actually Innocent" of murder and for the court not to hear his claims would constitute of a complete miscarriage of justice. Lack of an adequate law library and access to thereof.

(e) First PCR judge erred.

i. Applicant claims the PCR judge in his original application erred by not appointing counsel, not making specific findings of fact and state expressly its conclusions of law relating to each issue presented as stated in §17-27-80 also the disposition on the pleading and record is not proper if there exists a material issue of fact. Could not have been raised because it did not exist at the time.

Hereby Applicant request the aforementioned questions to be amended on his Application for Post-Conviction Relief filed in this court.

Jan. 13th 2013

Respectfully Submitted
Mario Hojos

Dec. 9, 2013.

Honorable Daniel E. Shearouse,
Clerk of Court
Post Office Box 11330
Columbia, S.C. 29211

RECEIVED

DEC 16 2013

Re: Hingjos v. State, 2012-CP-23-0808
S.C. SUPREME COURT

Dear Mr. Shearouse,

I am the ~~Applicant~~ Applicant in the above-captioned matter.

On November 14 2012 Applicant Ple for Post-conviction Relief. Upon the States failure to make any response or pleading, Applicant filed for ~~default~~ default on April 5, 2013, entitled Motion For Judgment By Default.

Twice Applicant has asked the Greenville County Clerk of Court to please return a copy of said motion. Applicant as sought help from this Honorable Court once before who then forwarded the request to the lower court.

Once again I am asking this Court to please help me obtain a copy of my Motion For Judgment By Default, from the Greenville County Clerk of Court.

In this motion, and pursuant to Rule 55(e), it listed all grounds for relief along with a full brief of the issues. A copy of which was sent to the Attorney General's Office with Affidavit of service.

A default hearing was held on June 20, 2013 in front of the Honorable D. Harrison Hill, where it was determined by him I was entitled to Counsel.

This same brief was then turned over to Counsel by me and Counsel has somehow lost it. Even after I asked him to make a copy of it he refused to do so and claims to have sent it to me yet I swear before God himself Counsel has not returned my brief to me.

It cost me a lot of time and ~~and~~ research to put that brief together. It issue had merit and warranted reversal mandated by both the Supreme Court of South Carolina as well as the Supreme Court of the United States.

Please look into this matter for me.

Respectfully

~~Mario Hinojos~~

Mario Hinojos
Lee 1/2 SMO-N-99
910 W. Sackety Hwy.
Bishopville SC
29610

Dec. 9, 2013.

Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 East North St.
Greenville, S.C. 29601

RECEIVED

DEC 16 2013

Re: Hinojos v. State, 2012-CP-23-07208
S.C. SUPREME COURT

Dear Mr. Wickensimer,

I am the Applicant in the above captioned matter. On April 5, 2013, Applicant filed with this Honorable Court a Motion For Judgment By Default.

The Applicant has requested a copy of this motion twice and has not received a response. The Applicant would request once again for a copy of the Motion For Judgment By Default filed with this Court April 5, 2013.

Respectfully
Mario Hinojos

Mario Hinojos 301870
Lee 1/2 SMO-N-99
990 W. Sackly Hwy.
Bishopville, SC 29010

State of South Carolina,)
County of Greenville.)

In the Court of Common Pleas

Case No. 2012-CP-23-07208

Mario Ramos Hinojos DR,)
SCDC No. 301870,)
Applicant,)

Motion TO
Amend
Judgment By
Default

v.)
State of South Carolina,)
Respondent.)

FILED
2013 APR 16 P 4:51
GREENVILLE CO. S.C.
PAUL B. WICKHISMER

Applicant submitted a motion for judgment by default with this Court that was mailed on April 5 2013. Applicant asserts that he left out an important ground for relief that he would ask this Court to Allow him to assert it at this time.

Finding of Facts / Conclusion of Law

In Adom v. State, 523 S.E.2d 753 (1991), the South Carolina Supreme Court dealt with the issue of successive PCR Applications, where this Court held, "a successive application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined or grounds waived in prior proceedings. In order to be entitled to a successive PCR application, the applicant must establish that the grounds raised in the subsequent application could not have been raised in the previous application. Tilley v. State, 334 S.C. 24, 511 S.E. 2d 689.

Additionally, [as in the Applicant's case], successive PCR applications are permitted in rare procedural circumstances. Case v. State, 277 S.C. 474, 289 S.E. 2d 413 (1982) (allowing a successive PCR application where the applicant's first PCR application was dismissed without assistance of legal counsel and without a hearing)."

The rule in this state is that where an application for Post-Conviction Relief alleges specific instances of ineffective assistance of counsel, which allegations are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by a hearing in the lower court. Royers v. State, 261 S.C. 288, 199 S.E. 2d 761, Chambers v. State, 262 S.C. 202, 203 S.E. 2d 426., Coardes v. State, 262 S.C. 493, 206 S.E. 2d 264.

Applicant's original Application alleged that his trial counsel failed to render, in several particulars, effective and adequate representation at his trial, and as of a result thereof, he was wrongfully accused. While Applicant filed his original Application pro se, which was not raised adequately, the allegations therein were denied by the State's Return. It cannot be fairly said that all of the allegations are conclusively refuted by the record. It follows that the Application states facts that are sufficient to require an evidentiary hearing.

In Chambers v. State, supra, this court held, "The Uniform Post-Conviction Procedure Act, Section 17-611, [now S.C. Code Ann. § 17-27-110], provides that the Supreme Court may adopt such rules as it shall deem necessary to effectuate the

purposes of the Act. Pursuant to such authority, this court adopted Rule 5 which provides:

"After return is made by the State, if the Application presents questions of law or issues of fact requiring a hearing, the court shall appoint counsel promptly to assist the applicant if he is an indigent person."

This rule is now recognized as Rule 71.1(d) S.C.R.C.P. Rules of procedure, like statutes, should be given their plain meaning. When the text of a rule is clear and unambiguous judicial inquiry is complete. see, e.g. Business Guides v. Chromatic Communications Enterprises, Inc., 498 U.S. 533, 111 S.Ct. 922, 112 L.Ed.2d 1140 (1991) (clear and unambiguous text in the Federal Rules of Civil Procedure is given its plain meaning)

Applicant's original application for Post-Conviction Relief was based entirely upon his claim that he did not receive the effective assistance of counsel at trial and appeal because of their deficient performance and incompetency, which was in violation of his rights under the provisions of the Constitution of the United States. These allegations set forth a prima facie violation of the Applicant's constitutional rights, and raised a question of fact which could only be determined in the lower court by an evidentiary hearing.

Furthermore, the PCR court dismissed Applicant's allegations of ineffective assistance of counsel without making findings of fact on the specific allegations raised.

S.C. Code Ann. § 17-27-80 (1976), requires the PCR court to make specific findings of fact, and state expressly its conclusions

of law relating to each issue presented." (emphasis added). The PCR court failed to make a finding of fact and conclusion of law regarding any of Applicant's claims, that renders the claims insufficient for appellate review and fail to meet the standard set forth in the Statute. see McCray v. State, 305 S.C. 329, 408 S.E.2d 241.

"Not only does this deprive the parties of rulings on the issues raised, but it makes review by the appellate court more difficult and ultimately increases the work load of all involved" where, as in this case, a hearing is required to secure the rulings which should have been made initially." Povitt v. State, 310 S.C. 254, 423 S.E. 2d 127.

Applicant charges the PCR judge with error in dismissing his original application for Post-Conviction Relief without conducting an evidentiary hearing. He asserts that under S.C. Code Ann. § 17-27-70 states, "Disposition on the pleading and record is not proper if there exists a material issue of fact." Applicant submitted a brief along with his ~~copy~~ original application that alleged several particular claims of ineffective assistance of counsel in detail, that were of such a kind as to "shock the conscience" of the court and make the proceedings a "farce and mockery of justice."

Assuming arguendo that such account is not credible, the record is completely silent as to whether or not Applicant was aware that he would waive previously raised grounds ~~by~~ or grounds not raised by asserting or re-asserting them in a subsequent application, where, the court failed to provide him with counsel who is better equipped with the knowledge and skill to enlighten Applicant and thus this

Court cannot find that Applicant made a deliberate, intentional relinquishment of a known right, which is essentially what a "waiver" is defined as legally.

Applicant filed a timely notice of appeal with this court on his first application. The Assistant Attorney General Mrs. Karen C. Ratigan directed Applicant to the proper rules to follow. He had a hard time receiving the rules of courts from the law library and did not receive it until after ~~two~~ ^{Three} (3) months later. He was under the impression that his appeal was actually pending and waiting to be appointed counsel. He did not realize till after he received the rules of courts that more was required than sending a mere "notice". This constitutes an "external factor" out side of the control of the Applicant.

Under P C R rules, an application or "one Bite at the Apple." Gamble v. State, 379 S.E. 2d 118 (1989). Successive P C R applications are generally disfavored because they allow an applicant more than one Bite at the Apple. Aice v. State, supra, Odum v. State, supra.

In the present case, Applicant never received a full and fair opportunity to present his claims in his original Application, nor receive a full adjudication on the merits of his original Application, thus Applicant never received a "Full Bite At the Apple". see Austin v. State, 409 S.E. 2d 395 (1991). Since Applicant would not be receiving more than one Bite At The Apple, but rather Applicant would be receiving His "Full Bite At The Apple"; wherein he would be entitled to a P C R evidentiary hearing, McCray v. State, supra, Fruitt v. State, supra, and effective assistance of Counsel at that hearing. Martinez v. Ryan, supra,

pg 6 of 6

and or an Austin review.

Applicant asserts he sought Appellate review of his first PCR and was denied a fair opportunity due to Lee C/E's inadequate law library and did not knowingly and intelligently waive the right to appeal.

Hereby, Applicant would ask the Court to grant him an Austin Hearing.

I, Mario Hingos, do swear under oath that the aforementioned facts are true so help me God.

Dated this 9th day of
April 2013

Respectfully submitted
Mario Hingos

Mario Hingos 3d870
Lee C/E SM-5-184
990 Wrecky Hwy.
Bishopville SC 29010
Applicant.

Other Counsel of Record
Attorney General
The State of South Carolina
PO Box 11667
Columbia SC 29211
Respondent.

State of South Carolina)	In The Court of Common Pleas	
County of Greenville)		
)	Case No. 2012-CP-23-07208	
Mario Ramos Hingos JR,)		
SCDC No. 301870,)	Affidavit of	
Applicant,)	Service	
V.)	By Mail	
State of South Carolina,)		
<u>Respondent.</u>)		

2013 APR 16 P 4: 59

FILED OCT 16 11 01 AM
GREENVILLE CO SC
PAUL B. WICKINS/MSH

1. I am the Applicant in the above-captioned case.
2. Regular communication by mail exists throughout the state of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Motion to Amend Judgment by Default in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Office of the
Attorney General
The State of South Carolina
P O Box 11549
Columbia SC 29211

Dated this 9th day of April 2013

Mario Hingos
Mario Hingos 301870
For Applicant.

April 17th, 2013

Page 1 of 2

Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED

APR 23 2013

S.C. SUPREME COURT

RE: Hingos v. State, 2012-CP-23-07208

Dear Mr. Shearouse,

This responds to your letter dated April 15th, 2013. Due to the law library not being up to date I never heard of the "Chief Justice's administrative order dated October 6, 2008. I thank this court for the copy. The books here at this institution stop at the year of 2003. All other case law is on a computer which I did not become accessible to it until this year of 2013.

Although the issue of the state's failure to comply with Due Process was not addressed.

1) Can the State of South Carolina ignore the Rules of Civil Procedures and disregard the State and Federal Constitutions?

2) Is it not the Courts primary function to ascertain the intention of the legislature when interpreting statutes? see State v. Johnson, 552 S.E.2d 339

3) Are not Rules of procedures "like statutes" and "should

be given their plain meaning" when interpreting them? see Whitehead v. State, 426 S.E.2d 315

4) If the state fails to comply with the applicable Rules of Courts when given a time line can they not be held in default? see Rule 55(a)(c), 54(c) SCRCP.

5) When a party to an action is held in default does it not constitute avoidance and deem a waiver of the right to assert any affirmative defenses?

APRIL 23, 2013

THIS COURT CANNOT
PROVIDE ANY LEGAL
ADVICE OR ASSISTANCE.

THEREFORE, WE WILL
BE UNABLE TO RESPOND
TO YOUR QUESTIONS. IF
YOU NEED ASSISTANCE, YOU
SHOULD CONSULT WITH
AN ATTORNEY.

Respectfully submitted
Mario Hinojos

Mario Hinojos 301820
Lee c/o SMU-S-184
990 Wilsacky Hwy.
Bishopville SC 29010
Applicant


CCENK

Karen C. Ratigan, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia SC 29211
Respondent.

Dated this day of April 17th
2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Mario Ramos Hinojos, Jr.,)
 S.C.D.C. No. 301870,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2012-CP-23-7208

RETURN AND MOTION TO DISMISS

FILED - COURT OF COMMON PLEAS
 GREENVILLE, SOUTH CAROLINA
 2013 MAY 24 AM 9:12

In response to the post-conviction relief (PCR) application filed November 14, 2012, the Respondent would show this Court:

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the April 2003 term of the Greenville County Grand Jury for two (2) counts of murder (2003-GS-23-2931, -2944) and one (1) count of assault and battery with intent to kill (ABIK) (2003-GS-23-2977). He was represented by Thomas J. Quinn, Esquire.

After the State brought the case to trial, the Applicant was found guilty. On May 12, 2004, the Honorable Larry R. Patterson sentenced the Applicant to concurrent terms of life imprisonment for each count of murder and twenty (20) years for ABIK.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected

Copy mailed to
 Applicant Hinojos
 Attorney
 on 5 / 24 / 13.

the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Hinojos, Op. No. 2007-UP-176 (S.C. Ct. App. filed April 17, 2007).

The Applicant filed a PCR application on April 15, 2011 (2011-CP-23-2579). The Applicant raised the following issues:

1. Ineffective assistance of trial counsel:
 - a. Failed to conduct proper pre-trial investigation.
 - b. Failed to challenge the voluntariness of the Applicant's statement at the Jackson v. Denno hearing.
 - c. Failed to object to malice charge.
 - d. Attempted to persuade the Applicant to lie on the stand.
2. Illegal search and seizure:
 - a. Lack of probable cause.
3. Ineffective assistance of appellate counsel:
 - a. Failed to explain PCR.

The Respondent submitted a return and motion to dismiss. The Honorable Robin B. Stilwell issued a conditional order of dismissal filed August 9, 2011 in which the Applicant was given twenty days to demonstrate why the PCR application should not be dismissed based on the expiration of the statute of limitations. Though the Applicant filed a response, Judge Stilwell issued a final order of dismissal filed October 21, 2011. The Applicant did not file an appeal.

II.

In his current PCR application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Prosecutorial misconduct.
3. Errant jury instructions.
4. Subject matter jurisdiction.
5. Miscarriage of justice.
6. First PCR judge erred.

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967).

In a document captioned "Motion to Amend Application for Post-Conviction Relief" filed February 7, 2013, the Applicant makes the following allegations:

1. Ineffective assistance of trial counsel:
 - a. Failed to move to quash indictment.
 - b. Failed to move for a mental and psychiatric evaluation/competency hearing.
 - c. Refused to allow the Applicant to assist in his own defense by refusing to allow access to his discovery materials.
 - d. Failed to object to prosecutor's closing argument.
2. Prosecutorial misconduct:
 - a. The prosecutor made inflammatory and prejudicial remarks in closing argument.
 - b. Withheld impeaching and exculpatory evidence material to the Applicant's guilt or innocence.
3. Subject matter jurisdiction:
 - a. Indictments were secured with evidence that was fraudulent.
4. Miscarriage of justice:
 - a. The Applicant claims actual innocence.
5. First PCR judge erred:
 - a. Failed to appoint counsel.
 - b. Failed to make specific findings of fact.

For the purpose of this Return, the Respondent incorporates the Greenville County Clerk of Court records, the South Carolina Department of Corrections' records, and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) 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, whichever is later.

The Applicant was convicted of the offenses he challenges in this application on May 12, 2004 and the South Carolina Court of Appeals dismissed his appeal on April 17, 2007. The Applicant was therefore required to file his application before April 17, 2008. This application was filed on November 14, 2012, which was over four years beyond the time the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

IV.

The Court should also summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. See Land v. State, 274 S.C. 243, 246, 262 S.E.2d 735, 737 (1980). South Carolina Code Ann. § 17-27-90 (2003) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a

subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” Id. (emphasis in original). If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Id.

As the Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief application, the Respondent moves for a summary dismissal of the application because it is successive.

V.

The Respondent submits the Applicant has failed to set forth any evidence to support his claim of prosecutorial misconduct. As such the issue should be dismissed. See Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989) (finding the burden is on the defendant to prove actual vindictiveness).

VI.

The Respondent submits the Applicant’s assertion that the trial court lacked subject matter jurisdiction is without merit. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary

elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). The Respondent further notes that indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. The indictments in this case were true-billed and clearly sufficient to put the Applicant on notice of the charges he was facing. See State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

VII.

The Respondent submits the Applicant has raised an issue related to jury instructions that is not cognizable in a PCR action. Rather, this allegation raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised **at trial or on appeal**. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as a ground for relief. Similarly, if the Applicant wanted to argue the judge erred in denying his first PCR application, the correct means to do so would have been through an appeal to the South Carolina Supreme Court.

VIII.

The Respondent denies each allegation not expressly admitted, qualified or explained.

IX.

WHEREFORE, the Respondent moves to summarily dismiss the application because it is successive to the prior PCR action and filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

April 30, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
 MARIO RAMOS HINOJOS, JR., 301870)
)
 Applicant,)
)
 vs.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent)

IN THE COURT OF COMMON PLEAS

2012-CP-23-7208

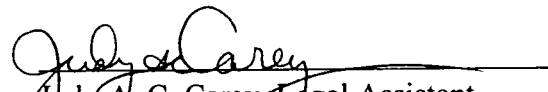
FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENS, JR.
 2013 MAY 24 AM 9:12

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mario Ramos Hinojos, Jr., 301870
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

DATED this 30th day of April, 2013.


 Judy A. C. Carey, Legal Assistant
 For Respondent

State of South Carolina)
County of Greenville)

In The Court of Common Pleas

Mario Ramos Hinojos DR,)
SCDC No. 301870)

Case No. 2012-CP-23-07208

Applicant,)

Reply

v.)

State of South Carolina)
Respondent)

FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENSIMMER
2013 MAY 21 P 2:23

In response to Respondent's Return and Motion To Dismiss
filed May 1 2013, the Applicant would show this Court:

I

Applicant filed this application for Post-conviction Relief on
November 14, 2012. Upon the Respondent's failure to comply with
the applicable time frame stipulated in Rule 12(a) SCRCP
Applicant moved the court for judgment by default pursuant to
Rule 55 SCRCP filed April 5th, 2013.

Respondent has made its Return and has failed to provide
this court with good cause why judgment by default should
not be granted.

II

Rule 71.1(a) SCRCP provides:

The procedure for post-conviction relief is provided by
the Uniform Post-conviction Procedure Act (Act), S.C. Code

Ann, §§ 17-27-10 to -120 (1985). "The South Carolina Rules of Civil Procedure shall apply to the extent that they are not inconsistent with the Act."

The Uniform Post-Conviction Procedure Act, S.C. Code Ann. §§ 17-27-80 provides in pertinent part:

"All rules and statutes applicable in civil proceedings are available to the parties."

S.C. Code Ann §§ 17-27-70^(a) provides in pertinent part:

"Within thirty days after the docketing of the application, or within any further time the Court may fix, the State shall respond by answer or by motion..."

Rule 12(a) SCRCP provides in pertinent part:

... in a Post-Conviction Relief proceedings the State shall make their return within... 90 days for a trial.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993). Under the "plain meaning rule", it is not the Court's place to change the meaning of a clear and unambiguous statute. In re Vincent D., 333 S.C. 233, 509 S.E.2d 261 (1993)

"What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the Courts are bound to give effect to the expressed intent of the legislature." Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992) If the legislature's intent is clearly apparent from the statutory language, a Court may not

embark upon a search for it outside the statute. Abell v. Bell, 229 S.C. 1, 91 S.E. 2d 548 (1956). When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning. Timmons v. South Carolina Triennial Comm'n, 254 S.C. 378, 175 S.E. 2d 805 (1970). In such circumstances, this Court simply lacks the authority to look for or impose another meaning... Beckebile v. Outen, 311 S.C. 50, 426 S.E. 2d 760 (1993).

Likewise when interpreting language of Court Rule, Court of Appeal applies same rules of construction used in interpreting statutes, and thus words of rule must be given their plain and ordinary meaning without resort to subtle forced construction to limit or expand the rule. State v. Brown, 543 S.E. 2d 568 (S.C. App. 2cd)

Because the statute setting forth a 30 day period, which was extended into a 90 day period, for execution on an answer operates as a statute of limitations, it constitutes a matter of avoidance under ~~governing~~ rule governing the pleading of affirmative defenses, and must be raised in the trial court when the defense became available. Linda Mc Company, Inc. v. Shore, 375 S.C. 432, 653 S.E. 2d 279 (S.C. App. 2cd)

General, affirmative defenses to a cause of action in any pleading must be asserted in a parties responsive pleading. Because the Respondent has failed to file a responsive pleading in the statutory time frame constitutes an avoidance and amounts

to a waiver of the right to assert an affirmative defense

III

The Respondent claims that this Application for Post-conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act S.C. Code Ann. §§ 17-27-43 (a)

Applicant explained to the Court in his original application that his appellate counsel never advised ~~to~~ nor explained to him of his right to PCR. Respondent argued that South Carolina Supreme Court has held that appellate counsel is not required to advise a defendant of PCR remedies, citing Sutton v. State, 302 S.C. 644, 606 S.E. 2d 779 (2004).

Applicant contends that claims of ineffective assistance of trial counsel can only be raised in state collateral proceedings, (PCR), not on direct review. This collateral proceeding in many ways becomes equivalent of Applicant's direct appeal as to the ineffective-assistance-of-trial-counsel claim. Martinez v. Ryan, 132 S.Ct. 1309 (2012). Also in Clemens v. Thompson, 501 U.S. 722, 753 754, 111 S.Ct. 2546, 115 L.Ed. 2d (1991), it was noted. "This makes the initial-review collateral proceeding a prisoner's "one and only appeal" as to an ineffective-assistance-of-trial-counsel claim." Therefore, Applicant contends pursuant to Douglas v. California, 372 U.S. 353, 357, 83 S.Ct. 814, 9 L.Ed. 2d 811 (1963). Applicant has a right, as of right, to appointment of counsel on his first appeal of ineffective-assistance-of-trial-counsel claims.

Applicant further states that it therefore is obligatory upon his appellate counsel to advise him that his only avenue of

redress is through a state habeas collateral proceeding and to assist him in perfecting the state habeas.

Where, here, in the case before us, Counsel at trial was grossly ineffective for not preserving any trial errors for the record, which Applicant's attorney on direct appeal could not raise due to the procedural bar, which occurred on account of his trial counsel's unprofessionalism and if Applicant's appellate attorney does not inform him of the right to an initial collateral review, Applicant being a poor layperson, it will most often result in an applicant becoming procedurally defaulted.

The Sixth Amendment itself requires that responsibility for the default be imputed to the state, see Evitts v. Lucey, 409 U.S. 387, 396, 105 S.Ct. 830, 836, 83 L. Ed. 2d 821 (1985). (Holding, "The constitutional mandate [guaranteeing effective assistance of counsel] is addressed to the action of the state in obtaining a criminal conviction through a procedure that fails to meet the standard of due process of law.") This was explained in Murray v. Carrier, 477 U.S. 478, 485, 495, 106 S.Ct. 2639, 2644, 2649, 91 L. Ed. 2d 397, and was reiterated in Coleman, *supra*, at 754, 111 S.Ct. 2546; Martinez, *supra*, at 1324, 132 S.Ct. 1309.

By deliberately choosing to move trial-ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoners' ability to file such claims. Claims of ineffective assistance at trial often require investigative work and an understanding of trial strategy. When the issue cannot be raised on direct review, moreover, a prisoner asserting an ineffective-assistance-of-trial-counsel claim in a

Pg.

Court opinion or the prior work of an attorney addressing that claim" Martinez v. Ryan, *Supra*.

Hereby, Applicant contends that, by the state allowing an appellant's attorney to just abandon a case without first having to appraise the defendant of his right to appeal his Counsel's ineffectiveness for the first time, being an appeal as of right, is against the Constitution of the supreme law of the land and error in the lower court, for the defendant unlearned in the law, may not comply with the state's procedural rules or may misapprehend the substantive details of federal constitutional law. Therefore it should be made obligatory upon all appellate counsels to inform their clients on how to properly file an ineffective-assistance-of-trial-counsel claim pursuant to Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989), which this court held, "all defendants who have been found guilty of a crime have a right to be informed of the possibility of appeal" (emphasis added). See also White v. State, 263 S.C. 110, 208 S.E. 2d (1974); Rule 51(E)(4) Sup. Ct. Rules and Rule 602 (E)(4) S.C. A.C.R. In initial-collateral-review proceedings of ineffective-assistance-of-trial-counsel an applicant's attorney on appeal should possess the express duty to assist their clients in properly perfecting their appeals of ineffective-assistance-of-trial-counsel which is the first appeal of that claim, therefore, "a right" under Douglas v. California, *Supra*. In Applicant's original Application the State cited Suttan v. State, 361 S.C. 644, 606 S.E. 2d 779 (2004) where the South Carolina Supreme Court held that appellate counsel is not required to advise of PCR. Applicant would now contest the constitutionality of that Decision.

The Due process Clause of the Fourteenth Amendment guarantees a criminal defendant the effective assistance of counsel on his first

Pg.

appeal as of right. "The promise of Douglas v. California, *supra*, that a criminal defendant has a right to counsel on appeal - like the promise of Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799, that a criminal defendant has a right to counsel at trial - would be a futile gesture unless it comprehended the right to effective assistance of counsel." Evitts v. Lucey, *supra*

Gideon v. Wainwright, *supra*, held that the Sixth Amendment right to counsel was "so fundamental and essential to a fair trial, and so, to due process of law, that it is made obligatory upon the states by the Fourteenth Amendment." *Id.*, 372 U.S. at 340, 83 S.Ct. at 794, quoting Betts v. Brady, 316 U.S. 455, 465, 62 S.Ct. 1252, 1257 86 L.Ed. 1595 (1942) Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938) see also Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 1019, 82 L.Ed. 158 (1932).

Gideon rested on the "obvious truth" that lawyers are "necessities not luxuries" in our adversarial system of criminal justice, 372 U.S. at 344, 83 S.Ct. at 796, "The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." Herring v. New York, 422 U.S. 853, 862, 95 S.Ct. 2550, 2555, 45 L.Ed. 2d 593 (1975). The Applicant's liberty depends on his ability to present his case in the face of "the intricacies of the law and the advocacy of the public prosecutor," United States v. Ash, 413 U.S. 300, 309, 93 S.Ct. 2568, 2573, 37 L.Ed. 2d 619 (1973) a criminal trial is thus not conducted in accord with due process of law unless the defendant has had competent counsel to represent him. Not being apprised of the right to appeal is as if there is no right at all.

In bringing an appeal as of right from his conviction, Applicant

pg.

is attempting to demonstrate that the conviction, with its consequent drastic loss of liberty, is unlawful due to his so much needed right of counsel was violated. To prosecute the appeal, Applicant must face an adversary proceeding that - like a trial - is governed by intricate rules that to a layperson would be hopelessly forbidding. An unrepresented appellant - like an unrepresented defendant at trial - is unable to protect the vital interests at stake. To be sure, Applicant did have nominal representation when he brought this appeal. But nominal representation on appeal as of right - like nominal representation at trial - does not suffice to render the proceedings constitutionally adequate; a party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all.

Here, where the initial-review collateral proceeding is the first designated proceeding for Applicant to raise the ineffective - assistance-of-trial-counsel claim, the collateral proceeding is the equivalent of Applicant's direct appeal, which he has as of right, because the PCR Court decides the claim's merits, no other court will address the claim unless first raise in PCR, and defendant's "are generally ill equipped to represent themselves" where they have no brief from counsel and no court opinion addressing their claim, Halbert v. Michigan, 545 U.S. 605, 617, 125 S.Ct. 2582, 162 L. Ed. 2d 552. An attorney's errors during an appeal on direct may provide cause to excuse a procedural default; for if the defendant's attorney appointed by the state is ineffective, the prisoner has been denied fair process and the opportunity to comply with the state's procedures and obtain an adjudication on the merits of his claim. Without

adequate representation in an initial-review collateral proceeding, a prisoner will have similar difficulties vindicating a substantial ineffective-assistance-of-trial-counsel claim. The same would be true if the state, as in Applicant's case, did not appoint an attorney for the initial-review collateral proceeding.

"A prisoner's inability to present an ineffective-assistance-of-trial-counsel claim is of particular concern because the right to effective trial counsel is a bedrock principle in this Nation's Justice System." Martinez v. Ryan, *Supra*.

For the aforementioned reasons set out above Applicant contends he should be excused and not barred by S.C. Code Ann. § 17-27-43(a) due to his appellate counsel's failure to properly inform and assist him, which resulted in prejudice by the fact that his statute of limitations expired, thereby defaulting his ineffective assistance claim, making it extremely difficult for Applicant to be heard and but for his appellate counsel's deficient performance, in violation of the rules of professional conduct Rule 407 rules 1.1, 1.3^[4], 1.4(a)(2)(b) [115], 3.1.(1)(2)(3) of the SCACR, Applicant would have filed a timely PCR and received the proper adjudication on the merits of his claims.

IV

Respondent contends this application should be dismissed due to the Applicant's failure to present any reasons why he could not have raised the current allegations in his previous post conviction relief application.

Applicant would direct the Respondent to a motion filed with this court April 16, 2013 titled Motion To Amend Judgment By Default.

Furthermore the application itself alleges the reason why Applicant could not have raised these additional grounds due to the inability to adequately research the law. Applicant currently has a number of Grievances filed with the institution on the matter.

Applicant filed a document that proved this with this court and did not receive notice of it. Applicant is in possession of documents that proves the inadequate law library here a wee C/I. Although Applicant only has the originals because he is not able to obtain copies due to his fear of losing the documents themselves.

The document he filed with this court plainly stated he was not accessible to the law computer due to his administrative segregation status. And because of this status he is only able to receive 3 law cases a week because books were not allowed. The most up to date S.E. 2d is Vol. 578 which is of the year of 2003. All other recent case law is on the computer, which Lee County Administrative Segregation Unit did not have until this year of 2013. Before then it was like a fishing expedition. Applicant would request three cases a week and hope that one was useful, or lead you to a case that was, because if Applicant did not have a cite to a case he could not get the book to actually research errors of the law. therefore it is a very slow process

studying at the rate of three law cases a week and then to be expected to combat individuals whom have years of research invested in their litigations. This constitutes an external factor outside of the control of the Applicant.

S.C. Code Ann § 17-27-90 States:

"All grounds for relief available to an applicant under this Chapter must be raised in his original, supplemental, or Amended application... unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application."

Therefore, due to insufficient access to law resources Applicant was not able to adequately raise those grounds for relief in his original application and therefore should be excused and not barred as successive.

V

The Respondents contentions of the Applicant's Claim that the trial court lacked subject matter jurisdiction is without merit cannot stand.

Respondent would argue that the indictments were, on their face, sufficient and that indictments are not evidentiary or jurisdictional documents - they are merely notice documents. That is not sufficient in itself to determine whether the trial court lack subject matter jurisdiction, when the sole witness that went before the grand jury was the lead investigator, an officers of the state, whom also swore under oath for issuance

of an arrest warrant to a magistrate on an affidavit to information he could not have had. If this investigator would mislead a magistrate judge this Court cannot say whether or not he would do the same in grand jury proceedings and in fact must assume there is a likely probability he would do like wise in the grand jury proceedings. If the grand jury proceedings were not conducted in accord with due process and the indictments secured through deceitful means or with evidence which was "the fruit of a poisonous tree" or based on fraudulent or misleading information the indictments themselves would be null and void and therefore the trial court would lack subject matter jurisdiction or it would amount to the complete deprivation of procedural due process to the Applicant.

Applicant bases this on the South Carolina Constitution Art I § 11 which provides:

"No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed."

SC Const. Art I § 3 provides:

"The privileges and immunities of citizens of this state and of the United States under this constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of laws."

Procedural due process requires (1) adequate notice; (2) adequate opportunity to be heard; (3) the right to introduce evidence; and (4) the right to confront and cross examine witnesses. Therefore if the indictment or "notice" is null and void then Applicant should not have been "held to answer for any crime the jurisdiction over which, is not within the Magistrate's Court" due to the insufficient "notice".

It is the generally accepted rule in this jurisdiction that a grand jury has supervision of the enforcement of law and order, the preservation and protection of morals and social order, supervision of public offices, the inspection and examination of the books of such offices, and conduct of them by the officers occupying them, and thing of like import. Yet if the officer whom is the sole witness who testifies before the grand jury is corrupt and taint the proceedings then ~~it~~ makes the judicial system a mockery and due process non-existent.

VI

Respondent argues that the Applicant has failed to set forth any evidence to support his claim of prosecutorial misconduct and that issues related to error by trial judge should have been raised on appeal.

Applicant would like to inform Respondent that all grounds for relief are under the guise of Ineffective assistance of counsel which requires and evidentiary hearing to determine the merits of the claims.

Respondent also would argue that errors of first PCR Judge should have been raised on appeal.

Applicant would ask the court for a belated appeal in accords with King v. State, 417 S.E.2d 868 pursuant to Austin v. State, 409 S.E.2d 395 which would require a hearing.

VII

Wherefore, the Applicant moves this Court for an evidentiary hear to review the merits of his claims or for sentence to be set aside and Applicant to be retried.

Respectfully submitted,

Manio Hingos

Manio R. Hingos 301870
Lee Ct SMO-S-184
990 Wisacky Hwy.
Bishopville SC
29010

Dated this 15 day of
May, 2013

State of South Carolina
County of Greenville

In the Court of Common Pleas

2012-CP-23-07208

Mario Ramos Hingos JR,
SCDC No. 301870,
Applicant,

Affidavit of
Service By
Mail

2012 MAY 21 P 2: 24

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

v.
State of South Carolina
Respondent.

I am the Applicant in the above Captured action.

Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

I have this day served a copy of the Applicant's Reply in the above-captioned matter on the following persons by depositing in the United States mail, postage prepaid:

Karen C. Raligan
Office of Attorney General
Post office Box 11549
Columbia SC 29211

The Honorable D. Garrison Hill
305 East North St. Suite 213
Greenville SC 29601

Respectfully submitted,

Mario Hingos

Mario Hingos 301870
990 Wilsack Hwy
Bishopville SC 29010

Dated this 15 day of
May 2013

RECEIVED

June 6 2013

JUN 12 2013

Dear

Daniel E. Shearouse,

2013-001278

S.C. SUPREME COURT

Sir, I am having an issue here at Lee Co I with improper access to the courts. I am being denied the ability to ~~obtain~~ obtain copies nor has the law library been accessible for (2 1/2) two and half weeks. I am to go to court on June 20, 2013, Mario Ramos Hingos JR, Applicant v. State of South Carolina, Respondent, Case No - 2012-CP-23-07008 filed with the Greenville Clerk of Courts office.

I would have to ask the courts to intervene with the institution here at Lee County. I am being denied the ability to prepare a defense.

I have spoke with officer Johnson, Sgt Mack whom both have told Capt. Commander. Warden McCall has come on the rock once in the past 2 months and when I attempted to speak with him he walked right past me as if my matters do not concern him.

I swear under penalty of perjury the foregoing is true and correct.

Respectfully submitted
Mario Hingos
Mario Hingos 301870
Lee Co SMU-S-184
990 Wasacky Hwy
Bishopville SC 29010

Bridgette Godbold

From: SCDEfilingstat@scd.uscourts.gov
Sent: Monday, January 06, 2014 11:27 AM
To: scd_ecf_nef@scd.uscourts.gov
Subject: Activity in Case 2:13-cv-01900-JFA-BHH Hinojos v. South Carolina Department of Corrections et al Response in Opposition to Motion

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**U.S. District Court
District of South Carolina**

Notice of Electronic Filing

The following transaction was entered by Bratton, James on 1/6/2014 at 11:26 AM EST and filed on 1/6/2014

Case Name: Hinojos v. South Carolina Department of Corrections et al

Case Number: 2:13-cv-01900-JFA-BHH

Filer: William Byars

Mr Davis

Mrs Eastridge

Michael McCall

Anthony Padula

Document Number: 60

Docket Text:

RESPONSE in Opposition re [58] MOTION to submit into evidence Response filed by William Byars, Mr Davis, Mrs Eastridge, Michael McCall, Anthony Padula. Reply to Response to Motion due by 1/16/2014 (Bratton, James)

2:13-cv-01900-JFA-BHH Notice has been electronically mailed to:

James Rufus Bratton , III jrb@aikenbridges.com, bdg@aikenbridges.com

Samuel F Arthur , III sfa@aikenbridges.com, twd@aikenbridges.com

2:13-cv-01900-JFA-BHH Notice will not be electronically mailed to:

Mario Ramos Hinojos, Jr