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Claudia Thurston

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MAR 07 2014

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE SUPREME COURT

Case No. 2012-212875

Clarence Austin Harrison, #291401,
Applicant,

MOTION TO HOLD APPEAL IN
ABEYANCE

vs.

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State of South Carolina,
Respondent.

MAR 07 2014

S.C. SUPREME COURT

Appellant, Clarence Austin Harrison, submits this motion to hold this appeal in abeyance so that he can go back and obtain a ruling on all issues presented to the PCR Court for the following reasons:

PROCEDURAL HISTORY

This matter was presented to this Court by way of Petition for Writ of Certiorari filed after a denial of a PCR hearing held on June 7, 2012, at the Greenwood County Courthouse. Counsel Jennings B. Anderson who is the counsel for this matter in this Court's jurisdiction and who was also PCR Counsel filed a Johnson Petition with Petition to be Relieved as Counsel on September 17, 2013, and Appellant filed a Pro Se Petition for Certiorari within the 45 day period that was provided by the court.

DISCUSSION

On April 25, 2011 and May 29, 2012, Appellant amended issues to his PCR Application and these issues were raised at the evidentiary hearing but was not

ruled on by the PCR judge in his order of dismissal. The S.C. Supreme Court has held that the general rule that a PCR judge must make specific findings of fact and conclusions of law for an issue to be preserved for appellate review, and a Rule 59(c) motion must be filed if issues are not adequately addressed in order to preserve those issues for appellate review. Marlar v. State, 653 S.E.2d 266 (2007). A review of the PCR Court's order reveals that the judge did not set forth any specific findings of facts or reach any conclusions of law regarding the issue of Counsel's failure to object to reference to prior bad acts in the indictments, failure to make proper objections and motions, and issue involving Appellate Counsel failure to raise issue on appeal concerning an overruled objection during prosecutor's closing argument, nor does the record contain a Rule 59(c) motion asking the court to do so.

Moreover, pursuant to S.C. Code Ann. § 17-27-80, which mandate in relevant part, that a court considering a application for Post-Conviction Relief "shall make specific findings of fact and state expressly its conclusions of law, relating to each issue presented" the court had a mandatory duty to issue a decision on all issues presented. A rule of procedure may not be invoked to nullify a mandatory statutory result. State Dept. of Highway v. Dickinson, 341 S.E.2d 174 (1986), also State v. Cottingham, 177 S.E.2d 297 (1953). Therefore, applying the mandatory rule of construction in regards to the PCR attorney having the obligation to file a 59(c) motion once they receive the order which does not address all issues presented does not override the mandatory statutory construction of § 17-27-80.

It must also be kept firmly in mind that the court of S.C. does not recognize "hybrid representation", so Appellant could not have filed a 59(c) motion himself to preserve his issues for appellate review. Thus, when the system has failed an applicant it would be a gross miscarriage of justice for Appellant to be held liable for the court not complying with the mandates of law. Because the General

Assembly has the power to prescribe the legal definitions by statute and those definitions are binding on the courts and should prevail. Puris v. State Farm Mut. Auto Ins. Co., 403 S.E.2d 462 (1991).

CONCLUSION

WHEREFORE, stating the facts in regards to the filing of this motion, Appellant ask this Honorable Court to review and grant him the ability to go back and obtain a decision on his issues to preserve them for the district court if need be.

Dated: March 5th, 2014

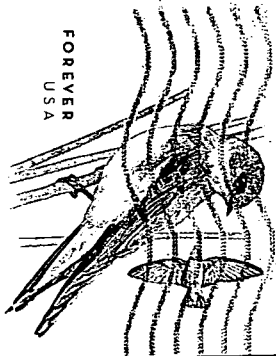
Respectfully submitted,

s/ Clarence Austin Harrison
Clarence Austin Harrison,
Appellant.

Tyger River Corr. Inst.
200 Prison Rd.
Enoree, S.C. 29335

Clarence Harrison # 291401
TYGER River Corr. Inst.
Unit 5-213 Lower Yard
200 Prison RD
Enoree SC 29335

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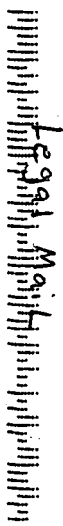


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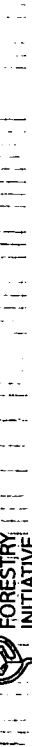
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