Joshua Samuel, 96996
Evans C.I. F5D-234 (Cherokee)
610 Hwy 9 West
Bennettsville, SC 29512

March, 11 2014.

RE: RECONSIDERATION 2012-206675

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

Dear Mr. Shearouse:

Sir, I recently received the denial of my Writ of Certiorari from your Court (March 6, 2014). In this Order Denying my Writ of Certiorari, the Court indicated in their order that "Petitioner has not filed a pro se petition." This is not correct because as soon as my Appellate Counsel filed his Jonnson Petition, I Did file my Pro-Se brief witin the (45) days after I received notice. I have enclosed a copy of the brief that I did submit for the Courts consideration. I want to thank you for your thoughtful consideration in this matter.

With Kind Regards...I Am.

Sincerely, Yours,

Joshua Samuel

CC: A/W
D/E/S
File

Enclosure:
Pro-Se Brief
Motion to Reconsideration

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY

COURT OF COMMON PLEAS

2009-CP-21-40

APPELLATE CASE NO. 2012-206675

Joshua Samuel,.....Petitioner,

v.

State of South Carolina,.....Respondent.

MOTION FOR RECONSIDERATION

I hereby humbly move this Honorable Court under SCACR 221 to reconsider the Court's determination. Specifically, The Court in it's order of Dismissal of my Writ of Certiorari was dismissed. However, the Court did not take into consideration the Pro-Se Brief that I filed within the (45) days from the filing of Counsel's Johnson petition. .

This 13 Day of March, 2014.

Joshua Samuel, 96996
Evans C.I. F5D-234
610 Hwy 9 West
Bennettsville, SC 29512
(Petitioner Pro-Se)

STATE OF SOUTH CAROLINA

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PROOF OF SERVICE

I Joshua Samuel do hereby certify that I have served a copy of my Motion for Reconsideration and Pro-Se Brief on the Respondent's Counsel of record by depositing the same in the United States mail and Postage prepaid and addressed as follows:

South Carolina Attorney General's Office
Post Office Box 11549
Columbia, SC 29211
(Counsel for Respondent)

Joshua Samuel, 96996
Evans C.I. F5D-234
610 Hwy 9 West
Bennettsville, SC 29512
(Petitioner Pro-Se)

March 13, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM FLORENCE COUNTY

COURT OF COMMON PLEAS

2009-CP-21-40

APPELLATE CASE NO. 2012-206675

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PETITIONER'S PRO-SE BRIEF

Joshua Samuel, 96996,
Evans C.I. F5D-234
610 Hwy 9 West
Bennettsville, SC 29512
(PETITIONER PRO-SE:)

South Carolina Attorney
General's Office
P.O. Box 11549
Columbia, SC 29211
COUNSEL FOR RESPONDENT:)

On July 2, 2005 Appellant (Joshua Samuel) was arrested by Florence City Police Department on charges of three (3) counts of pointing and presenting a firearm, a charge which was fabricated by the Appellant's Sister-In-Law (Pricilla Zimmerson) a County Deputy Sheriff for Florence County. A charge that was so constructed and bogus; there were no Warrants and the evidence that was supposably seized on that day, were never taken to the Police Station on the July 2, 2005 Police Report. The Appellant's Sister-In-Law was a start of many acts of conflict of interest involved in this case which should have been addressed before Trial by Appellant's counsel but was not. According to the (ABA) American Bar Association a paid or a Public Defender has an obligation to give his all in the fight for a defendant's rights, and also he/she has an ethical obligation to advise the Court promptly when a conflict of interest arises during the course of the Trial, or when a conflict is discovered. State v. Munn, 574 P.3d. 1147. Appellant also asserts counsel never filed a Brady Motion, failed to object to burden shifting instruction on elements of the alleged crime, that alone constitutes ineffective assistance. The Appellant's Warrants were even signed by someone other than himself, which should have rendered the Plea on the Indictment invalid. Summerall v. State, 294 S.E.2d. 344(1982) §17-23-130 & 140. Appellant should have been advised of Double Jeopardy claim and make conscious and calculated decisions to waive it and plead guilty. Appellant should also have been advised of any lesser included offenses which the

Jury would be instructed on if he went to Trial. Kerrigan v. State, 304 S.C. 561, 406 S.E.2d. 160 (1991). Appellant asserts that counsel's failure to object at Trial to sentencing is a violation of Double Jeopardy and waives objection in Post Conviction Relief unless it is offered to support a claim of ineffective representation. Hyman v. State, 278 S.C. 50, 299 S.E.3d. 330. USCA Constitution Amend. 6 Code 1976 §17-27-10 to §17-27-120; Wood v. Georgia, 450 U.S. 261, 101 S.Ct. 1097, 67 L.Ed.2d. 220 (1981). Appellant was True Billed on October 2005 for the pointing and presenting of a firearm. The Appellant was visited at the Detention Center by an Investigator by the name of Mrs. M. Robinson, an investigator for the Florence Police Department. On that day Appellant was questioned by Mrs. Robinson without being properly versed on his Miranda Rights. Then approximately later Mrs. Robinson came back to the Detention Center and took the Appellant's DNA without a Court Order or any kind of Warrant. Appellant asserts that his Due Process and Equal Protection of the Law were violated for the pre-indictment delay of over fifthteen (15) years in the Indictment of 1980 to 1991 which was served in June 2006. State v. Lee, 602 S.E.2d. 113, Weaver v. Gramham, 101 S.Ct. 960, 67 L.Ed.2d. 17(1981), Stoner v. Graddick, 751 F.3d. 1535 (1985), U.S. v. Burns, 990 F.2d. 1426,1435 (4thCir.), Miller v. Florida 107 S.Ct. 2446, U.S. v. Marion, 404 U.S. 307, 92 S.Ct. 455, U.S. v. Lovasco, 431 U.S. 783, 97 S.Ct. 2044, Elmore v. State, 409 S.E.2d. 397, Plyler v. Moore, 129 F.3d. 728,734 (4thCir.1997) are Ex Post Facto violations. Appellant asserts

that he was illegally incarcerated from the very start. Appellant also asserts that even on (ROA Tr.p.21 ln. 17-23) Mrs. Robinson admitted herself that it was seven (7) days later when CSC was first reported; so then how could it be on the Police Report on July 2, 2005 with the Pointing and Presenting a Firearm in which the victim also state at (ROA Tr.p.96 ln. 1-25 and Tr.p.99 ln. 6-7) that she never mentioned anything about the CSC until days later. Appellant filed for a Speedy Trial on March 2006, which was never acknowledged. Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d. 101(1972), Pitts v. N.C., 395 F.2d. 182,185 (4thCir.1968), U.S. v. Bracy, 67 F.3d. 1421,1427 (9thCir.).

Appellant was taken from his Jail Cell to the Detention Infirmary on a date that was not even clear by Mrs. Robinson herself, as stated before. DNA was taken illegally by the Investigator Mrs. Robinson herself in which she was not in compliance with §23-3-630, §23-3-640, §23-3-650, Roe v. Doe, 417 S.E.2d. 641, §15-3-555(A)(B) and Title §17-13-140 which is also a violation of Chain of Custody Procedures.

Appellant states that on (ROA Tr.p.22 ln. 19-21) speaks about the Miranda Rights had been given. Appellant asserts that he told Mrs. Robinson that he did not want to talk to her without a lawyer present, so then Appellant gave Mrs. Robinson a number to the Law Firm of Chambers Johnson of Charleston, S.C. with his assistant Ms. Hunt, lawyers that he had on a Tort Claim. Mrs. Robinson ignored Appellant's request and proceeded with the questioning. Her actions were done in the presence of

the Infirmary Nurses and Ofc. Floyd, the officer that took the Appellant from the cell to the Infirmary, which was never mentioned in Court. The Eighth (8th) Amenoment states that Prison Officials also have a duty to protect inmates from violent treatment by other guards and Police Officials in tumultuous situations. Ware v. Jackson County, 150 F.3d. 873,884 (1998), U.S. v. Russell, 685 F.Supp. 1245. Appellant's counsel should have objected to the DNA Evidence because Mrs. Robinson was not a Certified Phlebotomist or any other Professional that are mentioned in §23-3-630. The actual Phlebotomist for the Detention Center was a nurse whose name was Mrs. Nagy, which she qualified on (ROA Tr.p.141 ln.5) as an Expert but yet testified (ROA Tr.p.141-142) about talking Mrs. Robinson through during the test step by step, an act she herself was not qualified to give someone else permission to take DNA for Court use. Appellant also asserts that he was entitled to an Evidentiary Hearing to determine whether he was prejudiced before and after Trial. Counsel was constitutionally ineffective for not investigating and/or failed to secure "DSS" testimony, where in the alleged victim stated on Direct "when asked why she told "DSS" that nothing happened back in 1991, she stated that she was afraid because "DSS" asked her in front ofhim (the defendant). Had DSS been subpoenaed to testify, they would have refuted the victim's assertion of their practice in questioning alleged victims and could have seriously questioned her credibility, for purposes of False Swearing Statute. A line exist between cases of Impeachment which can be any diminution

of the credibility of a witness and knowing and willfully False Swearing, which when materiel is perjury and the only testimony which is willfully and knowingly false. O.C.G.A. §24-9-950.

Seconoly "DSS" found the allegations to be "unfounded" back in 1991 according to the State §20-7-650 S.C. Code Ann. and §63-7-930 to §63-7-1430. The States case was not properly put to the test because counsel's failure to subpoena said witness, which would have also been qualified as an Expert Witness and would have brought the State Expert Witness findings into question. Appellant plead guilty when during Trial, counsel failed to subpoena "DSS" for his defense (ROA Tr.p.69 ln. 1-12).

In effect at the time of the alleged offenses, the State retroactively applied §16-3-655(2) to him. The Assistant Attorney General said at the PCR Hearing that the charges were not retroactively applied, but how can they not be when on the Indictment it says date of offense 1980 to 1991. The State moved to qualify "Mrs. Cook" as an Expert Witness but they never stipulated in what field. Martinez v. State, 304 S.C. 39, 403 S.E.2d. 113(1991). This was improper because counsel should have (A) raised questions as to her qualifications and (B) objected as to in what field she was being qualified as an "Expert Witness" in which, when an Expert Witness testifies, they must keep their answers to a Medical Degree of certainty to the field they were qualified in (ROA Tr.p.136 ln. 13-17) counsel was also constitutionally ineffective for not objection and/or not moving the Court for a Lyle Hearing in that the

Solicitor mentioned to the Jury about five (5) charges, "The State was in effect letting the Jury know that there were other charges, a Lyle Hearing would have prevented the State from making such prejudicial comments, such comments permeated the province of the Jury". A Lyle Hearing would have first turned on Substantial Evidence Rule and then it substantiated the Court would have weighted probative vs. prejudicial standard of introducing "Prior Bad Acts". State v. McClellan, 323 S.E.2d. 772, not the subject of conviction. Lyle, State v. Lyle, 116 S.E.2d. 323 (S.C.1997) evidence of other crimes must be put to a rather severe test before admission. The Acid Test of admissibility is the logical relevancy of the crimes. The Trial Judge must clearly perceive the connection between the other crimes and the crimes charged, Lyle Supra. Counsel was again constitutional ineffective in not filing the "Notice of Appeal" when a Criminal Defendant ask counsel to Appeal and under this circumstance a reasonable defendant would want to Appeal. Roe v. Flores-Ortega, 528 U.S. 470,476-80 (2000). Appellant asserts that counsel never talked to him until the start of Trial and still there were no strategy or any defenses at all. Trial counsel's failure to investigate and to adequately conduct pretrial preparations was not strategic and requires relief. Id. Turner v. Ducan, 158 F.3d. 449 (9thCir.1998). Furthermore counsel necessarily should have challenged the witnesses particularly the nurse's testimony of the Florence Detention Center as unreliable and should have calleo an Expert in the field of Medicine rather than let the Jury receive testimony

that was no Qualified Medical Evidence of an Expert. The failures described, show counsel's represenation left Appellant in a situation that appeared bleak and likely would have resulted in a conviction as counsel was not properly prepared as described herein. Appellant did not know anything about Trial Proceedings, Rules of Evidence, calling Witnesses or the Criminal Process. When Appellant plead guilty, he did so under significant duress, after being brought to Trial in which he testified under Oath that he was innocent, because counsel failed to represent him and provide reasonably effective assistance, in that counsel used scare tactics and truthless threats to induce Appellant to plead guilty unkowingly and unintelligently. Appellant has presented a claim of ineffective assistance of counsel that rises to the level of a violation of Appellant's Sixth Amendment Right to the effective assistance of counsel as guaranteed by the Constitution of the U.S. of America and the S.C. Constitution Act. State v. Gunn, 313 S.C. 124,130, 437 S.E.2d. 75,78 (1993). Appellant asserts that the only difference in the lesser included offenses and the degrees of the crime is in the nature of the circumstances surrounding the commission of sexual battery. The Statutes for the date of offenses were different, even the age of the victims in the Statues were different at the allege time of offense and the time of the Appellant's conviction. State v. Summers, 274 S.E.2d. 427, State v. Mathis, 340 S.E.2d. 538, State v. Outlaw, 304 S.C. 347, 404 S.E.2d. 516 (S.C.App.1991). Appellant's Parole was taken from him on 1/28/11, because of the 1/1/96 Act

"No Parole Offense" which should be a violation when the Appellant's Indictment and Sentencing Sheet clearly states date of offense 1980 to 1991, clearly before the 1996 Act. The Court was without jurisdiction to impose sentence, also there exist evidence of material facts not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice and Parole unlawfully revoked. Appellant asserts that his CSC Indictment was defective in numerous ways, even certain elements of the Statutes were changed. Each count of an indictment must stand on it's own, but if one count incorporated paragraphs too may be considered in determining whether a count properly charges an offense. Fed.Practice Digest Key 99 CA.4 (Md.1995), also an Indictment cannot change the required elements of a Statutory Offense, Key 107.1 CA.6 (Ky1999), U.S. v. Coward, 669 F.2d. 180,184 (4thCir.1982). U.S. v. Floresca, 38 F.3d. 706. The Appellant's Trial consist of mainly coerced lies and hearsay, at (ROA Tr.p.112 ln. 7-25), counsel (Mr. Floyd) made a Motion to Exclude Any Testimony concerning the paternity testing based on the fact that its time period is outside of the relevant time period for those matters. The Prosecutor (Mr. Parr) speaks about Counts of the Indictment of CSC Third Degree, which kept the preceedings moving forward, another violation and vindictive move to force Appellant to plead to the Second Degree Charge. The Appellant claims that he was also prejudiced by charges impermissibly joined and fundamentally unfair as in Bourgeois v. Whitley, 784 F.2d. 718.

Appellant asserts that his Guilty Plea Transcript as well as the evidence at the PCR Hearing should have been considered. Harris v. Leeke, 262 S.C. 131, 318 S.E.2d. 360 (1984). Counsel (Mr. Floyd) failed to assert a meritorious Motion To Suppress Evidence at the Trial but did not, which makes the proceedings fundamentally unfair. Sikes v. State, 448 S.E.2d. 500, Appellant contends that the ex post facto prohibition which forbids the imposition of punishment assigned by law when the act to be punished occurred, critical to relief under the clause is not the inoividuals right to less punishment but the lack of fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed when the crime was consummated. U.S.C.A. Art. I § 10 cl. Appellant asserts that his indictment was multiplicious and duplicious thereby making it defective. U.S. v. Nash, 115 F.3d. 1431, 118 S.Ct. 1054.

Appellant wish to be able to adopt the saving clause as in Dover v. Gold Kist Inc., 314 S.C. 235, 442 S.E.2d. 598 (1994), Carter v. State, 327 S.C. 355,362, 495 S.E.2d. 773,777 (1998). The Appellant would have insisted on going all the way through Trial with a little help from his counsel (Mr. Floyd). Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985), Alexander v. State, 303 S.C. 246, 513 S.E.2d. 100 (1999), Cherry v. State, 386 S.E.2d. 624 (S.C.1989), Holland v. State, 322 S.C. 111, 470 S.E.2d. 378 (1996). Appellant contends that six of his given counsel's quit on him without any type of written or verbal notice, one quit in front of the Judge at the 1st PCR

Hearing (Mr. Yarbarborough) and was told by the Judge on Record to do everything that the Appellant asked of him. Appellant only request was for counsel (Mr. Yarborough) to please have his two Briefs clocked and stamped and send back to him after amending them to his PCR, but counsel still never complied with the Judges Order's. Appellant asserts that his 4th, 5th, 6th, 8th and 14th Amendment Rights were violated. SCRC Appellant Court Rules states that lawyers should be in compliance with Rules 1.1 Competence to 1.4 Communication. Lawyers should be in compliance to the Rule DR-1-102, Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525 (1975), O.C.G.A. § 24-9-85(b), Davis v. State, 238 GA.App. 84,89 (7), 517 S.E.2d. 608 (1991), McCant v. State, 234 GA.App. 433,436, 506 S.E.2d. 917 (1998), Tarvestad v. State, 261 GA. 605,606, 409 S.E.2d. 513 (1991). Appellant asserts that the Court did not have subject matter jurisdiction to convict him. State v. Gentry, 363 S.C. 93, 610 S.E.2d. 494 (2005). Appellant also contends that joinder of offenses in his indictment was improper State v. Tate, 334 S.E.2d. 269, and that his Statutes should have been under the Grandfather Clause. A mere citation to the applicable statute does not give the defendant notice of the nature of the offense. An indictment that must rely on a Satutory Citation does not "fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished. See Hamling v. U.S., 418 U.S. 87,117, 94 S.Ct. 2887,2907-08, 41 L.E.2d. 590 (1974). Furthermore, a statutory citation does not ensure that the

Grand Jury has considered and found all essential elements of the offense charged. It therefore fails to satisfy the Fifth Amendment guarantee that no person be held to answer for an infamous crime unless on indictment of a Grand Jury. See Hooker , Supra, U.S. v. Pupo, 841 F.2d. 1235 (4thCir.1988).

An indictment must (1) contain the elements of the offense charged and fairly inform a defendant of the charge against him, and (2) enable him to plead double jeopardy in defense of the future prosecutions for the same offense. Hamling v. U.S., 418 U.S. 87, 94 S.Ct. 2887,2907-08, 41 L.Ed.2d. 590 (1974), Russel v. U.S., 369 U.S. 749,763-64, 82 S.Ct. 1038,1046-47, 8 L.Ed.2d. 240 (1962). These principles are embodied in Federal Rules of Criminal Precedure 7(c)(1) which requires that: The Indictment....shall be a plain concise and definite written statement of the essential facts constitution the offense charged.

Appellant also asserts that there was evidence used at Trial against him that was not in his Rule 5, such as the alleged Statement of the Defendant used at Trial, all of the State's Witnesses. There were never any Medical Protocol Kit even in this case or any Medical Doctor's Examination Records period. Vernon v. Harley Mutual Casualty Company, 135 S.E.2d. 84 (1964). Applicant asserts that the joinder made the Jury more likely to convict him and that it prejudice his case a great deal. State v. Hines, 39 F.3d. 74,79 (4thCir.1994), Hines v. U.S., 516 U.S. 1156, 116 S.Ct. 1038 (1996), State v. Smith, 322 S.C. 107,109, 470 S.E.2d. 364,365 (1996), Rule 249(1),

White v. State.

Appelant asserts that he was denied a guaranteed fair piece of the apple, equal protection of the law, denied protection against double jeopardy and was never informed of the defectiveness, and the wrong statutes

In all fairness we would like the Court's in this matter to acknowledge and admit to their wrong doing and to give this Appellant the proper Relief.

/s/ Joshua Samuel
Joshua Samuel

Joshua Samuel, 96996,
Evans C.I. F5D-234 (Cherokee)
610 Hwy 9 West
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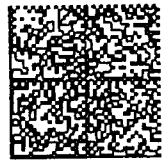

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