Attn: Appellate Case # 2012-213313

The Honorable Daniel E. Shearhouse

Clerk

Because petitioner has (10) ten days to respond pursuant to SCACR Rule 227(b) and has been granted leave to proceed pro-se, has NO access to copies and thus cannot provide copies to the Attorney General. Petitioner is humbly requesting that this court allow An Extention and forward petitioner's Reply to the State Returns to Lenelle C. Durant to further comply with the court order instructing her to make copies and forward to All parties. Further, this is an attempt to comply with SCACR Rule 227(b) as a pro-se litigant. As such petitioner is request a time extention because he is pro-se and said documents must be copied and forwarded to all parties, Since I am unable to provide copies, I can not Respectfully comply with the time Requirements of SCACR Rule 227(b) and is the Reason for said Requested time extention, the state has been allowed two, this would be my first.

W. Russell

3/23/14

pro-se

Please comply with petitioner request for notice of Receipte

Thank you.

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Petition For Writ of Certiorari To The Court of Appeals

The State of South Carolina

In The Supreme Court

Appeal From Richland County

Court of Common Pleas

Casey L. Manning, Circuit Court Judge

Warren Russell ©

Petitioner

V.

State of South Carolina

Respondents

Appellate Case # 2012-213313

Petitioner's Reply to the States Return S.C.A.C.R. Rule 227(b)

Warren Russell ©
LCI 990 Wateree River Hwy
Bishopville, SC. 29010

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Petitioner, Now comes before this humble court in his pro se status, and submits his Reply to the Respondents Return, pursuant to SC ARE, Rule 227(b).

(1) Respondents asserts that petitioner waived his right to a direct appeal. However, the record and exhibit submitted to this court will show clear and convincing evidence to the contrary and an unreasonable application of Supreme Court laws. § 2254(d)(1), See Williams V. Taylor, 529 U.S. 362, § 2254(d)(2); and resulted in an unreasonable determination of the facts in light of the evidence presented in the State Courts proceeding. See, Strickland V. Washington; Parker V. Quarterman; Lafler V. Cooper; Hill V. Lockhart;

Petitioner, makes the material claim that his due process was violated by counsels failure to file petitioners requested direct appeal. Frazier V. State, 410 S.E. 2d 572; Simpkins V. State, 401 S.E. 2d 142; and U.S. V. Pawlowski, 492 F. 3D 263, which held, failure to file appeal in spite of clients unequivocal instruction to do so is ineffective assistance, even when defendant waived right to appeal in plea agreement. In Frazier V. S.C. 430 F. 3D 696, Held, counsel is ineffective where counsel failed to consult with defendant Regarding an appeal and defendant expressed an interest and intent to pursue an appeal. See, Hawkins V. Hannigan, 185 F. 3D, 1146, 1152, Held claims of ineffective assistance of counsel on appeal is reviewed to determine whether omitted issues was meritorious. In, U.S. V. Swartz, 342 F. 3D, 1154, 1155-56, Held, a lawyer who disregards specific instructions to perfect a criminal appeal acts in a manner that is both professionally unreasonable and presumptively prejudicial. See, Mason V. Hanks, 97 F. 3D. 887, 894, Held, Ineffective assistance of counsel, where counsel failed to raise obvious issues on Appeal.

Petitioner, asserts that in Evitts V. Lucey, 469 U.S. 387, Held, that the due process clause of the 14th Amendment guarantees a criminal defendant the effective assistance of counsel on his first Appeal as of Right; Douglas V. California, 372 U.S. 353; Anders V. California, 386 U.S. 738; Entsminger V. Iowa, 386; and Rodriguez V. U.S., 395 U.S. 327, 89 S.Ct. 1715. In Williams V. Taylor, supra, the courts held, that ineffective assistance of Counsel claim is clearly established Supreme Court precedent within the meaning of § 2254(d)(1)

The Record is clear, there is no evidence petitioner waived his right to a direct appeal. Counsel did not seek to Withdraw as counsel; Instead, counsel ceased handling the appeal without ensuring petitioner had retained other counsel or was being represented by appellate defense, See Rule 602 (E)(4). SCACR. Since petitioner did not knowingly and intelligently waive his rights to a direct appeal, Petitioner is entitled to a belated appeal under State and Federal law. See, Davis V. State, 342 S.E. 2D. 60; White V. State, 208 S.E. 2D. 35; Anders V. California, 386 U.S. 738; Douglas V. California, 372 U.S. 353; Frazier V. S.C., 430 F. 3D, 696; and U.S. V. Witherspoon, 231 F. 3D 923.

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Petitioner Requested an appeal, see original PCR application, See PCR testimony, petitioner never waived said right. Nevertheless, counsel abandon his client appeal, and the issues his client wanted to raise in the appeal. In Maples V. Thomas, 132 S.Ct at 912, the courts for the first time explicitly recognized that abandonment by counsel can suffice to excuse a procedural default. Abandonment by counsel constitute "cause" to excuse a procedural default when the client has NO notice that he effectively lacks representation by counsel at the relevant time. Petitioner, requested counsel to file said appeal, therefore petitioner was under the belief that his counsel would respect and protect petitioner right to said appeal. Maples holds, that a client under agency principles, is not charged with the consequences of a lawyer's conduct when the lawyer has abandoned the client. By severing the agency relationship, abandonment obviates the basis on which the client as principal is charged with the consequences of the lawyer's conduct. Additionally, a client cannot be faulted for failing to act on his own behalf when he lacks reason to believe his attorney of record in fact, are not representing him. These concepts should be applied to petitioner's because trial counsel abandon petitioners' claims at trial, and on direct appeal, and first collateral review counsel abandon these issues in collateral attack, by refusing to raise these claims adequately and sufficiently in PCR.

Petitioner, reasserts that because trial counsel was ineffective for failing to comply with the "Contemporaneous objection Rule" at trial to the meritorious issues of (1) Double Jeopardy, (2) Judicial vindictiveness of the plea (Rule 11 violation); (3) Involuntary and unintelligent guilty plea (Lack of factual basis); (4) Unconstitutional Coercive Aiken charge; (5) Manifest Necessity for a mistrial and (6) The Jury revealing its improper division and decisional disagreement. Petitioner was denied from complying with the State's procedures solely due to ineffective assistance of trial counsel. See, Wainright V. Sykes 433 U.S. State, a state procedural Rule which requires that a "contemporaneous objection" be made deserves great respect from federal courts, because of the fact that; (1) it is a Rule employed by a coordinate jurisdiction within federal system and for the many interest it serves in its own right; (2), it enables the record to be made with respect to the federal constitutional claims when the memories and the recollections of witnesses are freshest; and (3), it enables the judge who observes the demeanor of those witnesses to make the factual determinations necessary for properly deciding the federal constitutional question.

A "Contemporaneous objection" Rule may lead to the exclusion in state court of the evidence or behavior objected to, thereby making a major contribution to fairness in criminal litigation; Without the evidence claimed to be vulnerable on federal constitutional grounds, a jury may acquit a defendant, and that will end the case, or a jury may nonetheless convict a defendant, and he will then have one less federal claim to assert in his federal petition.

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Furthermore, an objection on the spot may force the prosecution to take a look hard at its hole card, and even if the prosecutor thinks that the State trial Judge will admit the evidence he must contemplate the possibility of Reversal by the State appellate court or the ultimate issuance of a federal writ based on the improperiety of the State courts Rejection of the Federal Constitutional Claim. Stone V. Powell, 428 U.S. 465; Henderson V. Kibbe, 431 U.S. 145, 152. This is of great concern in this case at bar, because petitioner completed a full trial, where a verdict was reached on one count before the plea. Obviously, as a practical matter, a trial counsel cannot procedurally waive his own inadequacy.

Petitioner, asserts, that there can be no dispute of the prejudice he suffered because of counsels failure to comply with the independent and adequate state procedural ground which would prevent direct Review of his constitutional violations ~~of the Amendment~~. Said failure to comply with the States "Contemporaneous objection" Rule was plain error which affected substantial Rights, and thereby, may be noticed although they were not brought to the attention of the courts. See, U.S. V. Olano, supra; U.S. V. Young, supra; U.S. V. Atkinson, supra; and Chapman V. California, supra. See, Medlock V. One 1985 Jeep Cherokee VIN 1JCWB7828ET129001, 322 S.C. 127, 134, 470 S.E. 2d 378, 378 (1996) ("To preserve an issue for appeal, a contemporaneous objection is necessary and specific grounds must be clearly stated."); State V. White, 311 S.C. 289, 428 S.E. 2d 740 (Ct App 1993); State V. Lyons, 277 S.C. 222, 226, 284 S.E. 2d. 786, 789 (1981) (Concluding defense counsels failure to contemporaneously object did not preserve the issue for appellate Review); I'On L.L.C. V. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E. 2d. 716, 724 (2000); State V. Williams, 303 S.C. 410, 411, 401 S.E. 2d. 168, 169 (1991) (concluding appellate courts will not generally address an issue unless it was raised and ruled upon by the trial court).

It is thus clearly that the "Cause" and "prejudice" is because of counsels misconduct. See, Martinez V. Ryan, 2012 WL 912950, and Coleman V. Thomas. U.S. V. Frady, 456 U.S. 152, 102 S.Ct. 1584 71 L.E 2.d 816, Engle V. Isaac, 456 U.S. 102 S.Ct 1558, 71 L.Ed 2d. 783; State V. Arthur, 304 S.C. 347, 404 S.E. 2d 516; U.S. V. David, 83 F. 3d 683 (C.A. 4 (VA) May 6 1996); Adkins V. Bordenkircher, 674 F. 2d 4th cir and many other cases support petitioner Should. See, Meadows V. Legursky, 904 F. 2d 903 C.A. 4. (W. VA) 1990, held, it had to waive the states' procedural Requirements to meet the ends of justice, waived the contemporaneous objection Requirements when the denial of constitutional Rights deprives the defendant of a fair trial. Petitioner's judicial recitation of the plea, is one of those, along with double Jeopardy claim.

Petitioner states the Courts have Ruled: The Right to counsel and the effective assistance of Counsel is to basic a Right to condition entitlement thereto upon an uninformed, untrained, indigent defendant to show that his appeal would have at least debatable merit when the ability to make

and preserve a record of what transpired was not even within grasp. Without the help of an adequate counsel, a prisoner will have similar difficulties vindicating a substantial ineffective assistance of counsel claim. Swenson V. Bosler, 386 U.S. 258, Halbert V. Michigan, 545 U.S 605; Evitts V. Lucey, supra; Ross V. Moffit, 417 U.S 600. Petitioner asserts that counsel set forth no grounds because it is self explantory that no counsel will find himself ineffective and set forth his own trial errors. Counsel cannot be expected to assert his own incompetence on direct appeal.

Gideon V. Wainwright, 372 U.S. 335; Powell V. Alabama, 287 U.S. 45, Halbert V. Michigan, 545 U.S. 605; and Penson/Wanstra V. Finley, states this right to counsel continues through that Review and to documents and tools of appellate Review. Where counsel is clearly required at trial and in certain instances even before the formalities leading to trial have begun and where counsel is clearly required at ~~trial~~ in the interim between the termination of trial and the beginning of an appeal in order that a defendant know that he has the right to appeal, how to initiate an appeal and whether, in the opinion of counsel, an appeal is indicated, this interim is critical, and a crucial one for a defendant because he must make this decision which may make the difference between freedom and incarceration. Counsel did none of the above and abandoned his client and clearly issues, and appeal.

Thus in order to establish "cause" the courts stated, a federal petitioner need only to satisfy the district court that the failure to object or to appeal his claims was the product of his counsels' ignorance or oversight, not deliberate tactic, See Murray V. Carrier, 477 U.S. 485. Ineffective assistance of counsel can violate due process by an isolated error of counsel if that error is sufficiently egregious and prejudicial. In Jones V. Burns, 463 U.S 745, When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine whether appellate counsel failed to present significant and obvious issues on appeal. Gray V. Greer, 800 F. 2d. 644, 646, Generally, the presumption of effectiveness will be overcome when the alleged ignored issues are clearly strong or meritorious issues. Further, the court of appeals may consider an ineffective assistance of counsel claim in the first instance on direct appeal when it conclusively appears from the record that counsel was constitutionally ineffective, U.S. V. Aleese, 430 F. 3D. 681; U.S. V. Addison, 2001 WL 409453. The lower court held in Braddock V. State, 545 S.E. 2d. 498 defendants are entitled to belated appeal where petitioner testified that he believed that counsel was proceeding with appeal, and counsel did not seek to withdraw, but instead ceased handling appeal, or if the record reflect that he did not waive his rights, See, PCR transcript pg # 45, Lines 1-10.

Petitioner is constitutionally entitled to a belated direct appeal

Petitioner, and the Record clearly reflects in petitioner's proposed order granting PCR Relief, that all these issues were properly raised to the PCR Courts, and the State implied consent to addressing these issues. SCRCP Rule 15(b) and; Barkley V. Rosenblum, 303 S.C. 340, 400 S.E. 2d 502 (Ct App 1991), thus this creates a situation where the State has waited to long to assert procedural default on these grounds See Engle V. Isaac, 456 U.S. 107, 102 S.Ct. 1558, 71 L.Ed. 2d. 783 (1982) (Stating, in some cases a state's plea of default may come too late to bar consideration of the prisoner's constitutional claims. The Record is clear from the 10/20/2010 default hearing transcript and the State's Order denying Post Hearing Motions and Counsel's Motion to be Relieved, which States "This court would note applicant additionally filed several other items/documents/pleadings with the Richland County Clerk which were heard at the July 26 2011, hearing, or otherwise reviewed and considered in their entirety by this court in conjunction with the current motions and finds each to be wholly without merit and exhibit unsuccessful in persuading this court to alter the Ruling set forth in the February 4, 2011 order of dismissal" See Attachment #1., See Oct, 20, 2010 Transcript "pg # 9 Line 7-13, State" The Court: I'll Report again. Everything that's been presented to me today, everything that's before me, everything that's been filed, I will look at and make a decision that will be global, it will take care of all the issues that have been presented to me today and at previous other times. I will wrap it up all in one ball and let you know what my decision is.

Therefore, this leaves no dispute that it is too late for the State to claim a plea of default on petitioners constitutional issues, properly presented to the State Court by implied consent. Petitioner asserts the purpose of exhaustion is not to create a procedural hurdle in the path of federal habeas court, but to channel claims into an appropriate forum, where meritorious claims may be vindicated and unfounded litigation obviated before Resort to Federal Court. Comity Concerns dictated that the requirement of exhaustion is not satisfied by the mere statement of federal claim in State Court. Just as the State must afford the petitioner a full and fair hearing on his federal claim, so must the petitioner afford the State a full and fair opportunity to address or resolve, the claim on the merits, Picard V. Connor, 404 U.S. 270, 275 92 S.Ct. 509, 512; Hawk, 321 U.S at 116, 64 S.Ct at 449; and Moore, 261 U.S. at 92, 43 S.Ct at 267.

Further, petitioner asserts that these issues where never addressed or adjudicated on there merits. Petitioner is aware that there is no text in the Statute Requiring a Statement of Reasons. The Statute refers only to a decision, which resulted from an adjudication. As every court

of appeal to consider the issue has recognized, determining whether a state court decision resulted from an unreasonable legal or factual conclusion does not require that there be an opinion from the state court explaining the state courts Reasoning. Chadwick V. Janecka, 312 F.3d 597, 606 (C.A. 3. 2002); Wright V. Secretary for dept. of Corr, 278 F.3d, 1245, 1253-1254 (C.A. 4. 2002); Sellan V. Kuhlman, 261 F.3d. 303, 311-312 (C.A.2 2001); Bell V. Jarvis, 236, F.3d 149, 158-162 (C.A.4 2000); Harris V. Stovall, 212 F.3d, 940, 943 (C.A.6 2000); Aycox V. Lytle, 196 F.3d. 1174, 1177-1178 (C.A.10 1999) and as this court has observed, a state court need not address or cite or even be aware of our case under § 2254(D), Early V. Packer, 537 U.S. 3, 8, 123 S.Ct. 362.

Where a state courts decision is unaccompanied by an explanation or not addressed at all, the habeas petitioner need only demonstrate that there was no reasonable basis for state court to deny relief. This is so whether or not the state court reveals which of the elements in a multi part claim it found insufficient. When a federal claim has been presented to a state court and the state court has denied relief, It may be presumed that the state court adjudicated the claim on the merits "in the absence of any indication or state law procedural principles to the contrary, Harris V. Reed, 489 U.S 255, 265 109 S.Ct. 1038. When the state court fails to articulate the rationale behind its ruling, this federal court independently Review the record and the applicable law. See Brown, 225 F.3d at 478; and Baker, 220 F.3d. at 291. In this case at bar, petitioner issues were properly before the DCA courts, and the South Carolina Supreme Court, the state did not and cannot allege procedural default because of implied consent thus this court can independently Review the record, issues, and the applicable law.

Accordingly, the provisions of the AEDPA apply to this case, See, Lindh V. Murphy, 521 U.S. 320 (1997). The exhaustion doctrine ... is ... Codified at 28 U.S.C. § 2254(b)(1)". O'Sullivan V. Boerckel, 526 U.S. 838, 842 (1999). Under the exhaustion requirement, a habeas petitioner challenging a state conviction must first attempt to present his claim in state court. Harrington V. Richter, 131 S.Ct 770, 787 (2011). With certain Narrow exceptions, federal courts cannot consider a claim at all, if it has not been exhausted in state courts. The exhaustion requirement thus reserves to the state courts the first opportunity to resolve factual disputes relevant to a state prisoner's claim. Cullen V. Pinholster 131 S.Ct. 1388, 1414 (2011). An exception is made only if there is no opportunity to obtain redress in state court or if the corrective process is so clearly deficient as to render futile any effort to obtain relief." Id. See also Matthews V. Evatt, 105 F.3d 907, 911 (4th Cir 1997) (Recognizing that, although not jurisdictional, the exhaustion requirement is strictly enforced; and that failure to exhaust remedies will be excused only where exhaustion requirement is expressly waived by the state or petitioner has technically complied therewith). In this case at bar, petitioner technically complied and the state expressly waived by implied consent, thus petitioners issues should be addressed by the Supreme Court and Federal court. Picard V. Connor, 404 U.S. 270, 275 (1971); and Coey V. Netherland, 518 U.S. 152, 162-63 (1996).

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Nevertheless, a State court and this State court did not address petitioner constitutional claims, however, a State court need not rely upon, nor need it even cite, Supreme Court precedent in order to avoid resolving a petitioner's claim in a way that is "contrary to" or involves an "unreasonable application" of "clearly established Federal law". Rather, even a State's court order which summarily denied relief are entitled to AEDPA deference. Richter, 131 S.ct. at 784; Cf. Early V. Packer, 537 U.S. 3, 8 (2002); § 2254(d)(1); Williams V. Taylor, 529 U.S. 362, 412, 120 S.Ct. 1495, 146 L.E. 2d. 389 (2000) "Contrary to"), § 2254(d)(1); unreasonable determination of the facts; § 2254(d)(2); Richter 131 S.ct at 785. In short, the PCR Courts rejection of petitioners claims was based upon an unreasonable determination of facts surrounding the claim § 2254(d)(2), See Garcia V. Johnson, 991 F.2d. 324, 326 (6th cir 1993) and § 2254(e)(1); See Lee V. Commen, 146 F.3d 645 616-17 (5th cir 1998). Petitioner again asserts and rebutts this presumption of correctness and has in fact shown by clear and convincing evidence, based on the entire record as a whole all alleged constitutional violations. See, Snyder V. Ortiz, 430 Fed. Appx 650, 652, 2009 WL 1833840 *2-*3 (10th cir 2009) and Pooco V. Moore, 131 S.Ct 733, 743 (2011) establishing that a State court application of Strickland was unreasonable under § 2254(d)

(2) Respondents asserts that trial counsel was not ineffective and that his representation was not below the professional standard, and that petitioner was not prejudice at all by trial counsel many errors. Petitioner reasserts that trial counsels many errors viewed under the cumulative error doctrine is so pervasive that to render a particularized prejudice inquiry is unnecessary, See, State V. Backman, 405 S.C. 225-246 S.E. 2d 483 (S.C. App 2013); State V. Mccracken, 399 S.C. 125, 731 S.E. 2d 604 (SC App 2012). This court has thus agreed that in South Carolina cumulative errors by counsel can be assessed under this doctrine. Suber V. State, 371 S.C. 554, 558, 640 S.E. 2d 884 (2007); Frecht V. State, 298 S.C. 54, 378 S.E. 2d (1988); State V. Johnson, 334 S.C. 78, 512 S.E. 2d 795 (1999); and again in this Supreme court in State V. Freeman, 319 S.C. 110, 459 S.E. 2d 867 (Ct App 1995). Thus this court must consider "all" of the instances of ineffective assistance of counsel allegations.

In this case at bar petitioner raised 15 seperate instances and allegation of counsels errors, and sufficiently showed prejudice as a result of all 15 ineffective assistance claim. Under this doctrine has shown Constitutional violations of his 6th Amendment Rights to effective assistance of counsel pursuant to Strickland V. Washington, supra; Lafler V. Cooper, 132 S.Ct. 1376 (2012); Hill V. Lockhart, Supra; and Butler V. State, 286 S.C. 441, 334 S.E. 81, 3 (1985); cert denied, 474 U.S. 1094 (1986). Furthermore, because petitioner completed a full trial in which the jury returned a guilty verdict on one of eight counts and was deadlocked on the other seven counts to include the lesser offenses. The inquiry on whether petitioner would have went to trial instead of pleading guilty is unnecessary, and prejudice is assumed. For trial counsel to allow a full completed trial where a verdict was reached and stated in open court, in front of the jury, with no dissent, defense counsel, defendant and prosecution all assent, to turn into a plea, is below professional norms, and unconstitutional.

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It would be incompetent for any attorney to knowingly and intentionally relinquish his clients Constitutional Rights under these circumstances, to advise his client, or allow his client to accept a plea initiated by the trial courts which just intervened counsel "that this jury is not able to reach a verdict, and it would be hard for any jury to do so." Not to mention the jury hopelessly deadlocked on the most serious charges, and the other mitigating factor in this case, such as a verdict reached on one count.

Petitioner asserts that he has shown by clear and convincing evidence that the State courts ruling and factual findings are erroneous, unreasonable, contrary to Supreme Court of the United States precedent in Strickland V. Washington, supra and others. Petitioner, states that courts have held that § 2254(D)(1)'s contrary to cause requires the rejection of a state courts decision which were substantially different from the relevant precedent of the Supreme Court, then it considered situations in which a state court correctly identifies the applicable Supreme Court precedent and standards contained in that precedent, but applies them unreasonably to the facts of the case. The courts held that this situation requires relief under § 2254(D)(1). The AEDPA does not require State or Federal Courts to wait for some nearly identical pattern before a legal rule must be applied. Carey V. Musladin, supra, nor does it prohibit a federal court from finding an application of a principle was unreasonable, Lockyer V. Andrade, 538 U.S. 63. Further, the statute recognizes, to the contrary, that even a general standard may be applied in an unreasonable manner. William V. Taylor, 529, U.S. 362, finding a state court decision both contrary to and involving an unreasonable application of the Standards set forth in Strickland V. Washington, supra, or Panetti V. Quarterman, 127 S.Ct. 2842, 2858 (2007); and Lafler V. Cooper, supra.

In addition to the situations where a state courts decision is "Contrary to" or an "Unreasonable application" of clearly established Federal Constitutional Law, 28 U.S.C. § 2254(D)(2), provides that a State Court decision "must be" Reversed, and Relief must be granted if the State court proceeding resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in State Court proceeding. Miller-El V. Cockrell, 537, U.S. 322. As such in this case at bar. Finally, if a legal issue has not been considered by the State Court on the merits, the Federal Court must decide those issues de-novo, See petitioner proposed order granting Relief, in which the State implied consent, but never addressed the issues in its decision, and petitioner 59(E) S.C.R.C.P motion. Wolfe V. Johnson 565 F.3d. 140, quoting Wiggins V. Smith, 539 U.S. 516, and Monroe V. Angelone, 323 F.3d 286. The deferential standard applies even when the State court fails to identify prevailing Federal Standards and principles to address the claim, Fullwood V. Lee, 290 F.3d 663; and Williams V. Taylor, supra.

Petitioner is challenging the State court decision, both in their recognitions of established legal Standards for determining counsels effectiveness, and in their factual conclusions that the evidence "in the record viewed as a whole") and cumulation of mitigating evidence presented "did not" Raise a Reasonable probability that the result would have been different.

Petitioner has sufficiently alleged the following ineffective assistance of counsel claims:

(1) Counsel failed to file a direct appeal

(2) Failed to object and preserve for appeal said jury verdict delivered by the jury

(3) " Failed to object and preserve for appeal the jury's Revelation of its numerical division and decisional disagreement of 11 to 1

(4) Failed to object and preserve for appeal trial courts ex parte communication with the sole hold out

(5) Failed to object and preserve for appeal the courts Second unconstitutionally coercive Allen charge

(6) Failed to object and preserve for appeal the trial courts initiation of the plea (coerce guilty plea)

(7) Failed to properly advise petitioner of the consequences of future constitutional rights to be waived with the participation of Community Supervised Program.

(8) Failed to object and preserve for appeal the prosecution presentation of known prejured testimony.

(9) Ineffective assistance of counsel in initial review of collateral proceedings.

(10) Failed to object and preserve for appeal the lack of factual basis for the plea, or details of the negotiation for said plea (Involuntary and unintelligent guilty plea) Due process violation

(11) Failed to object and preserve for appeal Double Jeopardy

(12) " Manifest Necessity for a mistrial

(13) Lack of probable cause

(14) Trial counsel's prejudicial and impermissable closing argument against his own client.

(15) Subject Matter Jurisdiction

In Cargle V. Mullin, 317 F. 3d 1196 (10th cir 2003), the court found prejudice both because of numerous instances of ineffective assistance of trial counsel. See also. Harris ex Rel. Ramseyer V. Wood, 64 F. 3d 1432, 1434 (9th cir 1992) defense counsel's many deficiencies cumulative prejudiced the defense. Mak V. Blodgett, 970 F.2d. 614, 622-23 (9th cir 1992); (cumulative errors Requiring Reversal).

Conduct of counsel prior to the entry of a guilty plea may be examined in evaluating the extent to which the prior representation influenced the voluntary and intelligent character of the guilty plea. The history of counsel's representation should be explored to determine if counsel's assistance was so ineffective assistance as to render the plea involuntary. A guilty plea does not bar collateral Review of allegations of ineffective assistance of counsel in so far as the alleged ineffectiveness bears on the voluntariness of the guilty plea, Hill V. Lockhart, supra; Padilla V. Kentucky, 559 U.S. 356, 130 S.Ct. 1473, 1486, 176 L.Ed. 2d. 284 (2010); Missouri V. Frye, 132 S.Ct. 1399 (2012)

Petitioner asserts that these Respondents attempt to portray the fact that all defects at trial have been waived is a deliberate attempt to mislead this court and would be based on an error of law. In short it would be "Contrary to" or an "unreasonable application" of clearly established Federal Laws to Habeas Law, 28 U.S.C. § 2254 (D)(1) and (D)(2) and an unreasonable determination of the facts in light of the evidence presented in the State court proceeding, see William V. Taylor, supra. A guilty plea may be examined in evaluating the extent to which the prior representations influenced the voluntary and intelligent character of the guilty plea, and does not bar collateral review of allegations of ineffective assistance of counsel, procedural defect in the guilty plea procedure, the plea was not voluntary or intelligently made, prosecutorial misconduct, or Double Jeopardy. Petitioner, makes a material claim to all five (5) of these factors and can not forfeit these constitutional claims.

Petitioner claims are in compliance with "the exhaustion requirements" and are presented fare up and squarely; his federal questions are plainly defined, are not bleak references which hint that a theory may be lurking and have been specifically raised to the State PCR Court and State Supreme Court, See, Mallory V. Smith 27 F. 3d 991, 995 (4th Cir 1994) and Kornahrens V. Evatt, 66 F. 3d. 1359, 1362 (4th Cir 1995). Nevertheless, the State has failed to address them and has not plead a procedural default, and thus may be too late to bar consideration of petitioner's constitutional claims.

Where allegations of ineffective assistance of counsel are made, the question becomes, whether counsel's conduct so undermine the proper functioning of the adversarial process that the trial and or plea can not be relied on as having produced a just result. Petitioner, asserts that the cumulative errors of trial counsel so undermine the proper functioning of the adversarial process that petitioner was denied due process, equal protection, effective assistance of counsel, and a fair process, and these errors plain upon the face of the record, caused prejudice, and created a reasonable probability that the result of the proceedings would have been different. See Butler, supra, Strickland, supra, Lockhart, supra, Cherry, 300 S.C. at 117, 386 S.E. 2d at 625. Petitioner has met both prongs of Strickland by clear and convincing evidence presented in State court, and the States decision is "Contrary to" and an "unreasonable application" of Clearly established Federal Constitutional Law, 28 U.S.C. § 2254(D)(1) and (D)(2), Petitioner is entitled to relief.

(3) Respondents asserts that said Plea was knowingly and intelligently made in compliance with due process of the law. However, the record reflects by clear and convincing evidence that petitioner was never informed of the factual basis for said plea, or the details of the negotiation of the plea. See plea transcript pg # 7, Lines 1-25, and PCR transcript pg # 73, 74, Lines 1-10. Thus there is no record to support a factual basis for the plea, and thus no reviewable Record for appeal, thus not in compliance with due process.

Furthermore, counsel testifide at the PCR hearing "there were No facts presented at the plea" and that MR. Russell was not put on Notice of the exact details for the negotiations that were incorporated in said plea. Nevertheless, the Rules Requires that whatever the Judges considers in making this determination must appear on the Record, and what is on the Record in this instant case, is insufficient to establish the factual basis Required by the Constitutional due process Requirement for pleas. See Harden V. State S.C. 277 S.E. 2d. 692 (1981) which follows: Standard 14-3.3, Pleas of Guilty, Responsibilities of the trial Judge. 14-1.2, Recording of the proceedings; 14-1-4, Court advise to the defendant; 14-1.5, inquiry into the voluntariness of the plea; and 14-1.6, factual basis of a Plea. A Courts Recitation ~~of the elements~~ to incorporate facts from the trial as the factual basis, and or a plain Reading of the indictments without explanation of the elements of the offense is inadequate. Boykins V. Alabama, 365 U.S. 238 (1969); State V. Rikard, 371 S.C. 295, 301 638 S.E. 2d. 72, 75 (Ct App 2006)

Respondents will attempt to point out petitioners statements at the Rule 11 ~~FRCP~~, hearing, However, said Statements by a defendant, the courts have Ruled as evidential on the issue of voluntariness and not conclusive. However, the lack of factual basis, and details of the ~~details~~ of the plea is clear on the Record and is conclusive.

Therefore, by clear and convincing evidence petitioner has shown that the States Courts Ruling and factual findings are contrary to Federal laws § 2254 (d)(1) and (d)(2); Boykins V. Alabama, supra, due process violation. The State Courts decision is substantially different from Relevant precedent of the Supreme Court: William V. Taylor, supra; Strickland V. Washington, supra; Premo V. Moore, supra; Carey V. Musladin supra; Lockyer V. Andrade, supra; Panetti V. Quarterman, supra.

Petitioner, is challenging the ~~statement~~ State courts decision, both in their Recognition of established legal Standards for determining counsels effectiveness, and in their factual conclusion that the "entire Record viewed as a whole" and cumulative of mitigating evidence presented" did not" Raise a Reasonable probability that the Result would have been different.

(4) ~~Judicial intervention of the Plea agreement~~, Respondents contends that there was no judicial initiation of the plea, and that there were no direct coercion from said judicial participation which would cause the defendant to feel coerced.

Petitioner, has shown by clear and convincing evidence that this courts decision is contrary and an unreasonable determination of facts in light of the evidence presented in State court proceedings § 2254 (D)(1); and (D)(2); William V. Taylor, supra. See PCR transcript pg# 57, Lines 1 to 11, pg# 67, Lines 8 to 17, pg# 68, Lines 1 to 12, and pg# 69, Lines 1 to 10.

Petitioner argues that the trial Judges initiation of the plea and amount of time to be served, is in violation of due process Constitutional Rights. The direct participation by way of initiation of the plea agreement and amount of time to be served is inconsistant with Constitutional Standards. Especially when the Record Reflects that petitioner "Never" indicated a desire to plea, and the State "Never" offered a plea. Trial Counsels initiation of the plea Negotiations, Constituted undue threat, an improper and unconstitutionally Coercive influence upon petitioners Choice to plea.

The actions of the trial Judge, achived by indirection what the courts are not permitted to do directly, and that is to decide the case is going bad for the State, dismiss the case at trial and Represent defendant by way of plea. Clearly it is below professional Norm for Counsel not to object to the trial Judges initiation of the plea, when the Jury has already been given a Modified 2nd Allen Charge, ex-parte communications with the sole hold out, and the Jury's Revelation of the Numerical division and decisional disagreement of 11 to 1, dead locked on seven of eight offenses. See. The A.B.A Standards Relating to pleas of guilty § 3.3. at 71-72 (1968) Substituting the Word "Shall" for "Should not" and Replacing the word "Participation" with "Initiation" note 4, Supra.

Petitioner has shown, supported by the Record, that the trial Judge improperly and unconstitutionally initiated and interjected herself into the plea process, and by doing such "Coerced" petitioner into the courts desired Result, a plea, and therefore, Rendered the plea involuntary as a matter of law. See, United States V. Fakes, 214 F. Supp. 560, 565 (S.D.N.Y 1963) (Citing Judge Marshall. Silbert V. United States, 370 U.S. 717, 718, 82 S.Ct. 1287, 1288, 8 L.E.2d. 798 (1962); Harden V. State, SC 277 S.E.2d. 692 (1981); State V. Cross, 270 S.C. 44, 240 S.E.2d. 514 (1971); and Estelle V. Meguire, 502 U.S. 62, 67, 68, 112 S.Ct. 475, 479-80, 116 L.Ed.2d. 385 (1991); (It is only where the plea is coerced by conduct Solely attributable to the State that due process clause of the 14th Amendment is offended).

Petitioner, is challenging the State courts decision, both in their Recognition of established legal Standards for determing counsels effectiveness, and in their factual conclusion that the "entire" Record viewed as a "Whole", and cumulative of mitigating evidence presented "did not" Raise a Reasonable probability that the Result would have been different. The State courts decision is Contrary to and an unreasonable application of Supreme Court precedent. See, Estelle V. Meguire, 502 U.S 62, 67, 68, 112 S.Ct. 475, 479-80, 116 L.Ed.2d. 385 (1991) and others.

(5) Successive prosecution / double Jeopardy - Respondents, asserts, that MR. Russell, plead guilty before the Jury Returned a verdict, and therefore was not prosecuted twice as he alleges, Once at the trial, and again the second time by a plea.

Petitioner, alleges that said Judicial overreaching by the trial Judge, allowed the State to make repeated attempts to convict petitioner, allowed the State a second chance to enhance the possibility that the petitioner would be found guilty, and allowed the State an unfair opportunity to Reformulate its

after the State failed to prove "at trial" to the Jurors, the full elements of the alleged crimes, based on the lack of evidence, Credibility of victims testimony, and the jury's inability to render a guilty verdict, even on the lesser included offenses.

Thus, petitioner was subjected to Sucessive prosecution, Once at trial, and a second time by way of Judicial initiation of the plea. It was this judicial overreaching (which is the initiation of the plea) that coerced petitioner to forego his trial with original tribunal, and it allowed the prosecution a second chance at a conviction. U.S.C.A. Const. Amend. 5; See, United States V. Love, 597 F.2d 81 (6th Cir 1979); United States V. Dinitz, 424 U.S. 600, 611, 96 S.Ct. 1075, 47 L.Ed. 2.d 267 (1976); Downum V. United States, 372 U.S 734, 83 S.Ct. 1033, 10 L.Ed. 2.d. 100 (1963); Gori V. United States, 367 U.S 364, 81 S.Ct. 1523 6 L.Ed. 2d. 901 (1961); United States V. Crouch, 566 F. 2d. 1311 (5th Cir 1978); and United State V. Wilson, 534 F.2d 76, 80-81 (6th Cir 1976).

Russell's (2) case might also be distinguished on the following grounds:

(1) Completed a full trial on eight counts (8); (2) The Jury Returns a guilty verdict on only one count; (3) Jury is hopelessly deadlocked on the seven most serious counts; (4) to include the lesser offenses; (5) The Courts give the first Allen Charge; (6) Jury returns again deadlocked on the same seven offenses, and reveals its numerical division and decisional disagreement of 11 to 1; (7) followed by the trial Courts ex parte communication with the sole hold out juror; (8) The Courts then gives a second Unconstitutional Allen Charge; Closing with the Judicial stoppage of the trial to initiate the plea and amount of time to be serviced. What makes this error so prejudical is at the Judicial negotiation and initiation of said plea, the trial Court states its opinion "that this jury is unable to reach a verdict, It would be hard for any jury to reach a verdict." A deadlocked jury has long been considered the classic basis for a proper mistrial.

Petitioner asserts that the trial Judge abused its discretion by failing to call a mistrial based on the manifest necessity of the deadlocked jurors. Further, the trial courts decision to stop the trial to initiate a plea, was irrational, irresponsible and precipitately. Further, it was done to force or coerce petitioner to forego his trial rights with the original tribunal, and it gave the State a second proceedings in which to secure a conviction. See, American Bar Association Project on Minimum Standards for criminal justice, Standard Relating to trial by Jury, § 5.4.(c); United States V. Klein, 582 F.2d 186 (2nd Cir 1978); Tolan V. United States, 370 F.2d 299 (9th Cir), cert denied 387 U.S. 932, 87 S.Ct. 2052, 18 L.Ed. 2d. 994 (1967); Forsberg V. United States, 351 F.2d 242 (9th Cir 1965) cert denied, 383 U.S. 950, 86 S.Ct. 1209, 16 L.Ed. 2d. 212 (1996); United States V. Cording, 290 F.2d. 392, (2d Cir 1961); United States V. Braham, 459 F.2d 546, 550 (3d Cir 1972); United States V. Goldstein, 479 F.2d 1061, 1068-1069; Wade V. Hunter, 336 U.S. 684, 689, 69. S.Ct. 834, 837, 93 L.Ed. 974 (1949); United States V. Lansdown, 460 F.2d. 164, 169 (4th Cir 1972); Beasfield V. United States, 272 U.S. 448, 47 S.Ct. 135, 71 L.Ed. 345 (1926); Marienfield V. United States, 214 F.2d 632 (5th Cir), cert. denied 348 U.S. 865, 75 S.Ct. 87, 99 L.Ed. 681 (1954)

See also Sullivan V. United States, 414 F.2d 714, 716 (9th cir 1969); (We doubt it is really any longer advisable to give the Allen charge instruction at all,); Cf. United States V. Contreras, 463 F.2d. 733 (9th cir 1972) and United States V. Medansky, 486 F.2d 807, 813 (7th cir 1973); cert. denied 415 U.S. 989, 94 S.Ct. 1587, 39 L.Ed.2d. 886 (1974)

Moreover, in this situation there are especially compelling Reasons for allowing the trial Judge to exercise broad discretion in deciding whether or not "Manifest Necessity" justifies a discharge of the Jury. On the one hand, if she discharges the jury when further deliberation may produce a fair verdict, the defendant is deprived of his "valued right to have his trial completed by a particular tribunal." But if she fails to discharge a jury which is unable to reach a verdict after protracted and exhausting deliberations, there exists a significant Risk that a verdict may Result from pressures inherent in the situation rather than the considered judgment of all the jurors. This trial Court was stuck on between the two options.

Simply put, the Jury guilty verdict returned in court only on one count, was not binding because said deliberations were not over, Jury still deliberating on the other Seven most serious charges, on which they were hopelessly deadlocked after two Allen charges, to include the lesser offenses. Which clearly Raises grave doubt to defendants guilty, and the strenght of the States case. Since the deliberation were not over, petitioner asserts that there exists a fair probability that the jury could have changed there verdict of guilty on the one count were they Reached a verdict, to not guilty and petitioner would have been acquitted on all charges which would have barred Representation. Said Judicial interference was the significant Risk, that resulted in abuse of discretion for not declaring a mistrial after a showing of "Manifest Necessity" (dead locked Jurors); Double Jeopardy (by way of Successive prosecutions) and a complete miscarriage of Justice.

Nevertheless, Since Substantial Rights were affected by the trial Judges' actions this court "must" explore this question under the plain error provisions of Rule 52(b) F.R.C.P. which states, Plain errors or defects affecting substantial Rights may be noticed although they were not brought to the attention of the Court. See ARIZON V. Washington, 434 U.S. 497, 98 S.Ct. 824, 54 L.Ed.2d 717 (1978)

Petitioner, is challenging the State court decisions, both in there Recognition of established legal standards for determining Double Jeopardy, and in there factual conclusion that the "evidence in the entire Record, viewed as a whole" and cumulative of Mitigating evidence presented "did not" raise a Reasonable probability that the Result would have been different.

Conclusion

As to any and all other issues not specifically addressed in this Reply to the States Return are likewise contested for the same Reasons. All other issues not raised herein, are adequately and sufficiently raised in petitioners original briefs to this court Respectfully

Warren Russell

Warren Russell pro-se

Petitioner assert that the State's Return to petitioner's Writ of Certiorari is grossly incorrect Regarding issues presented, Statement of the case, facts presented to the State PCR Court, and evidence presented in whole. However, Respondents has admitted to the fact that the PCR courts did not adjudicate any of the issues properly presented to the PCR Court, has admitted to the fact that trial Counsel did not comply with the Contemporaneous objection Requirement, and is the sole cause to these meritorious issues being procedurally barred. Furthermore, Respondents admitt to the fact that these issues presented at the PCR Court were not properly preserved by way of SCRCP 59(e) again this is an admission to PCR Counsel being the "cause" and prejudice to petitioner issues being procedurally barred.

Petitioner further, asserts that the State Return does not address petitioner's issue of Involuntary and unintelligent plea, or petitioner's issue of Subject Matter Jurisdiction and has waived said Right to a defense on these allegations. Further, petitioner points the Court attention to the State's implied consent pursuant to Rule SCRCP 15(b), and thus these issue, even though are direct appeal issue were addressed and preserved for appellate Review by said implied consent and cannot be used as a independent state ground, which would prevent Review. We are not aware of no binding authority that says that conduct by the State is not an expressed waiver of the exhaustion Requirement. In Short, Russell holds that the State's Words and actions made it clear that the State waived any exhaustion Requirement defense against Russell's claims in his PCR proposed order grant him Relief. The State Never objected to said implied consent and therefore, are procedurally barred, and has defaulted on all of these allegations in Writ of Certiorari of Federal Court.

Further, the State has admitted that these issues were not preserved for appeal by virtue of ineffective assistance of Counsel failure to comply with the Contemporaneous objections Rule, which is the "cause" and "prejudice" for not complying with the State independent adequate State ground. However, the mere fact that a federal claimant failed to abide by a State procedural Rule does not, in and of itself prevent this Court from Reaching the Federal claims. Where issues are presented to the trial and are not explicitly ruled on in the final order, the issue must be raised by an appropriate post-trial motion to be preserved for appeal. Once the issue has been properly raised by a Rule 59 motion it is preserved for appeal even if the trial judge does not rule on it. Express consent or implied consent constitutes a waiver of these issues on appeal. A party cannot complain of error his own conduct has induced (The State implied consent and cannot now argue procedural default.

The State has admitted that none of these issue has been addressed and adjudicated on it merits, never alleged that said issues are meritless, and are procedurally defaulted only because of trial Counsel and PCR Counsel's incompetence and ineffectiveness and is the "cause" and prejudice. Petitioner was diligent is bring these issues to counsel's attention.

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