ExHibit

A

State OF South CAROLINA
In the Court OF Common Pleas

Writ OF HABEAS Corpus
To ORANGEBURG County

Frederick L. Howell . . . . . Petitioner

VS

State OF South CAROLINA . . . . . Respondent

2013-CP-0183

Petition For WRIT OF HABEAS Corpus

Frederick L. Howell, #310890
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Proof of Service

Verification

Application to Proceed In Forma Pauperis without payment of Costs

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Statement OF Issues

1) Defense/Plea Counsel was Ineffective for failure to investigate and present a Defense for Trial.

2) Defense/Plea Counsel was Ineffective for failing to interviews and present Alibi's/witness's testimony for Trial.

3) Defense/Plea Counsel was Ineffective when he along with the Solicitor falsified and fabricated the Video Tape contents used to obtain the Guilty Plea (False Evidence)

4) Petitioners Conviction was obtained as a result of Counsels and Solicitors knowing use of false evidence. Plea not knowingly and voluntary.

5) Petitioners Conviction was obtained in violation of the State and Federal Constitution and Statutes.

6) Petitioner was convicted on the basis of outrageous misconduct by Defense/Plea Counsel and Soliciton. Guilty Plea not knowingly and voluntary.

7) PCR Counsel was Ineffective for his repeated refusal to follow clients wishes for Two(2) years and present all his claims on record he wanted raised and preserved for Appellate Review and Amend Application

8) PCR Counsel was Ineffective for his repeated refusal to Amend PCR Application for Two(2) years to ins-

Like All petitioners grounds was raised, ruled on and preserved for future Appellate Review.

9) PCR Counsel was Ineffective for her repeated refusal for two(2) years to obtain the evidence petitioner needed to prove each and every claim he wanted raised At the PCR hearing.

10) PCR Counsel was Ineffective for her refusal to file a 59(E) motion, As he Requested, To preserved All of his issues For Appeal.

11) PCR Counsel was Ineffective for her refusal To File And Serve Notice of Appeal.

12) Defense/Plea Counsel Testified, under oath, At the PCR hearing About Recieving Documentation (IAD Analysis) That Identifies petitioner From Crime Scene (Fingerprints) but, Committed Perjury And Falsified And Fabricated evidence Again, On Record As to the evidence used to obtain the guilty Plea. Evidence *DO NOT* Exist.

13) Due To the many Prejudicial errors Committed by Defence/Plea Counsel And PCR Attorney, Petitioner was denied A State And Federal Created Liberty Interest in Violation of the State and Federal Constitutions.

State of South Carolina
County of Orangeburg
Frederick L. Howell, #310990

Petitioner

v.

Alan Wilson, Atty. General
State of South Carolina

Respondent

In The Court of Common Pleas
In the 1st Judicial Circuit

Case No: 2013-CP-0183

Petition For Writ of
Habeas Corpus

Petitioner was indicted for burglary 1st degree by the Orangeburg County General Sessions Grand Jury. He was represented by Richard H. Gustafson, Esq. of the Orangeburg County Public Defenders Corporation. He was scheduled for Trial on August 19, 2005 before the Honorable James C. Williams. Petitioner Pled guilty And Sentenced to 23 years imprisonment for the indicted Charge.

Jurisdiction

Petitioner Set Forth with Cause of Action pursuant to the Jurisdiction that is Set Forth in Chapter 17 Sect. 17-17-10 et. Seq. And rule 1es SCRCP, State Habeas Corpus. upon Any Ground of Alleged error heretofore Available under this Chapter that is being Submitted or Amended Based out of Ineffective Assistance of Defense/Plea Counsel, Ineffective Assistance of PCR Counsel And Newly discovered evidence to establish his State And Federal Constitutional Claims of Actual Innocence.

ARGUMENT I

I) INEFFECTIVE ASSISTANCE OF DEFENSE/PLEA COUNSEL

A) Guilty Plea not knowingly and voluntary. Obtained by the use of falsified and fabricated Evidence, Fraud upon the Court, Perjury.

Petitioner was Assigned to be represented by Richard H. Gushafson. Petitioner Informed Attorney he was innocent And provided him with his Alibi's/witness's contact information And names despite his insistence Petitioner had no defense Due to the state being in possession of a Video Tape that shows petitioner Committing this Crime.

August 18, 2003 the day petitioner's Trial was set to begin, Petitioner was forced to Plead Guilty because; 1) Counsel Did not Contact nor Interview his witness's/Alibi's; 2) Prepared no form of Defense nor Prepared petitioner for Trial and *repeatedly* Delayed to petitioner He had no defense And Advised him to Plead Guilty. In fear of Receiving a life Sentence for a Crime he did not do, He Took this "Advice" and Plead Guilty.

During the Guilty Plea Proceeding, Defense Counsel And Solicitor *on Record* Stated what the evidence is that they *have, Seen and being used, as well as would be produced* had petitioner pursued Trial, but, is being used to obtain and Accept the Guilty Plea.

In the Guilty Plea Transcript (Exhibit A) defense Counsel And the Judge Discuss my Attorney's Position.

On Page 8, lines 3-6, 13-25 ending on page 9 line 1 the Dialogue goes;

Q) Have you explained to your Client... the evidence the State

has against him?

A) Yes, I have, in detail.

Q) Do you concur in his decision to Plead Guilty?

A) No, Sir, I do not.

Q) Why?

A) He has expressed to me Continually that he is Innocent...

Q) Do you think the State has enough evidence to convict him?

A) I think they have Overwhelming Evidence To Convict him, your Honor.

On page 16 lines 18-22, 24-25 and page 18 line 14, the Solicitor states, "... The defendant is seen on that Video Tape running Around, He's got gloves on, He's got Sort of a Camouflage outfit on. He's Flashing a Flashlight Into the windows. You never see him go inside the house at that time (implies at some point you do)... The State would have presented that evidence at Trial... The evidence is Overwhelming..."

On page 21 lines 16-25 ending on page 22 lines 1-5, Defense/Plea Counsel states, "... Very Simply, the Facts are basically as the Solicitor stated when I said Overwhelming, it's not necessarily a great deal of evidence in this case but, I have never... I have ever had a Burglary including this, have had it Fully Videotaped... But the Tape in and of itself From a Defense point of View, is a great encumbrance to us..."

Everything stated on Record by them, (Plea Counsel & Solicitor) concerning this Video Tape Footage and what it shows Do not exist And they have never seen nor had Any Video Tape depicting Any burglary in progress, being committed or Fully Video Taped. In it's entirety, the only thing

The Actual Video Tape shows petitioner walking towards the entrance of the lodge At least Thirty (30) minutes before the location became A Crime scene And ends with A still photo of petitioner well in advance of it becoming A Crime Scene. (See Exhibit B - Time stamp pic. - Time of Crime)

Before the Video Tape was Turned in As evidence, The owner Red-Acted (Edited) the Video Tape To the portions that was Relevant (Exhibit A page 17 lines 3-5) Therefore, erasing At least Thirty (30) minutes of Footage that would have shown A Crime being Committed And by whom. Their (Plea/Defense Counsel + Solicitor) verbatim description of the Video Tape Contents that, On Record, they stated to have seen And would be produced had petitioner pursued Trial, Comes verbatim From the incident Report And not the Actual Video Tape. (Exhibit B) It's impossible For Defense/Plea Counsel And Solicitor, To ever Seen Any Video Tape depicting petitioner or Anybody Committing this Crime As they stated because it was "Redacted" (Edited) before it was ever in their possession, by the owner.

They presented their Version of the Video Tape Contents As Factual Knowing that everything they'll be stating And using As "Evidence" Do not exist And the Video Tape Do not show what they stated to the Court And Used Against petitioner. They (Defense/Plea Counsel + Solicitor) Knowingly And Intentionally presented And used False evidence to obtain A guilty Plea Knowingly the only thing that Video tape shows is Petitioner walking towards the entrance of the lodge At least Thirty (30) minutes before it ever became A Crime Scene And places no one there when it occurred because that Footage was erased by the owner.

On June 9, 2009 petitioners Plea Hearing was held. During

His testimony, Under oath, he stated that the reason he put up No defense and Advise me to plead guilty is because of the video tape contents that shows Petitioner in the Crime Process Recovering Property And Documentation he Recieved that Identifies petitioner As the owner of the Fingerprints Recovered From inside the Crime Scene. (Exhibit C page 5 of 6, 2nd paragraph And Footnote #3; Exhibit C.L is Attempts that's been made to obtain Transcript, but, due to Pet Attorney not Filing A Appeal, Petitioner was denied Access to obtain Transcript)

Prior to this hearing (PCR), for Four (4) years, Nobody or no Record that pertains to this case (Plea Transcript, Exhibit B, Discovery) has ever mentioned Any Documentation that identifies me As the owner of Any Prints From that Crime Scene. During his testimony Under oath, is the First Time ever petitioner or the courts heard of this additional Evidence that Places petitioner Inside the Crime Scene (Exhibit C page 5 of 6, 2nd Paragraph And Footnote #3) And used To obtain the guilty Plea And why Defense/Plea Counsel Advised petitioner To Plead guilty (Exhibit C, page 5 of 6 Footnote #3)

Immediately After hearing his testimony, Under oath, Petitioner Contacted by letter the Navy Agency that provides the documentation Counsel Testified he recieved And Permanently Record And Classify All Fingerprints Taken in Criminal Investigations resulting in Convictions (S.C Code of Laws Title 24 Article 3 Sect 23-3-120(A,B), 23-3-40)

SLED's Forensic Labs A.F.I.S Database Section responded to An inquiry Petitioner Submitted in Regards to this Documentation Former Counsel stated he recieved. Petitioner Provided SLED Any And All Information Concerning himself And the Crime Scene And Specifically

Asked and According to the A.F.I.S Database, Is there Any Documentation that Identifies Petitioner As the owner OF Any Prints Recovered From the Crime Scene For which he was Convicted. Petitioner Prints Are listed in the A.F.I.S database For Comparison.

Exhibit D is SIEd's three(3) Responses And they state; "... A *thorough Search* OF our Database using the Information Provided in your June 16, 2009 letter (1 week AFter Testimony) And it Revealed *Nothing Found* under the name Frederick C. Howell..."

SO, if the very Agency that provides the results (Documentation) Former Counsel, *under oath*, stated to Recieve States that them And the Database have *nothing* (no physical Evidence) that links petitioner To this Crime, who provided this "Evidence" Counsel stated to Recieve And why it Can't be produced? Because petitioner *did not* Commit This Crime And *all the evidence* used And presented by them *Do not* exist in *No Record* in Relation to this Case.

LAW

The U.S Const. Amend III #7 Applicability to states; "Admission of evidence wrongfully obtained; when evidence is introduced that was allegedly obtained by conduct violative of the defendants rights of Federal Constitution, the defendant is entitled to have A Judge Conduct A evidentiary hearing. State v Burton 589 SE2d 6. A Conviction which is obtained through use of false evidence or Testimony, known to be such by the state, is A denial of Due process And in violation of the 14th Amendment. The U.S Supreme Court in Giglio stated, ".. That A Deliberate deception of A Court and Jurors by presentation of known false evidence is incompatible with the rudimentary demands of Justice. The same results obtain when the state, although not soliciting false evidence, Allows it to go uncorrected when it Appears. Giglio v U.S, 405 U.S 150, 92 S.Ct. 763, 31 L.Ed 2d 104. Due process requires that A convicted person not be Sentenced on materially untrue Assumptions or misinformation. U.S v miller, 263 F3d. Substantive Due process refers to certain Actions that the government may not engage in, no matter how many procedural safeguards it employs. Any errors in A guilty Plea hearing Are reversable unless shown to be Harmless. US v King 257 3d 1013 when false evidence is used even unwittingly, A new Trial is required, "IF there is A reasonable probability that (without the evidence) the results of the Proceeding would have been different." U.S v Young 17 F3d 1201.

Before A Federal Constitutional error can be held harmless, the Reviewing Court must be able to declare A belief that it was harmless beyond A reasonable doubt. Denial of Substantial Rights is so basic to the

Constitution that it could *never* be deemed harmless. It is a fundamental cornerstone of Due Process that the Constitution, "Cannot tolerate a Criminal Conviction obtained by knowing use of False Evidence", Miller v. Pate, 386 U.S 38, 87 S.Ct 785

Extrinsic Fraud is Fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is Granted for extrinsic Fraud on the theory that because the Fraud prevented a party from fully exhibiting and Trying his case and there has *never* been a Real Contest before the Court. Hilton Head Chr. of S.C v Public Serv. Comm., 249 S.C 9, 11 362 SE 2d 176, 177. Fabrication of evidence, where Attorney is *implicated*, is Fraud upon the Court. H.K Porter Co. v Goodyear Tire, 536 F2d 1115, 1119 Since Attorney's are officers of the Court, their conduct, if Dishonest, would Constitute Fraud on the Court. Dixon v. Comm'n of IRS, 2003 WL 1216290 Prosecution may not obtain Criminal Conviction through use of False evidence. Thompson v Calderon, 109 F3d 1358 Prosecutor may not use or solicit False evidence or allow it to go uncorrected. U.S v Goodson, 165 F3d 610 The Prosecution offends due process when False evidence is used where it solicits the evidence or simply allows it to go uncorrected when it Appears. Napue v Illinois, 360 U.S 264, 79 S.Ct 1173 Officers of the Court are Required to know the laws of this State and the responsibility to see that they Adhere to the laws of this State at all Times. SCACR Rule 407, State v Dunclea 264 S.C 216, 213 SE 2d 587, State v Gamble Lbr., 338 U.S 441, 337 SE 2d 105. They both, and are needed capacity to distinguish moral and legal right from moral and legal wrong and to recognize their Actions Charged As moral and legal wrong and *must* be held Accountable. S.C Code of Laws Title 17 Sec 17-1-10, State v

Law 270 S.C 664, 244 S.E 2d 302, These Actions And International Fabrication of Evidence used to obtain the Guilty Plea threatens the very Integrity of the Judiciary And the Proper Administration of Justice. Hazel-Atlas Glass Co. v Hartford Empire Co. 322 U.S 238, 244-246, 64 S.Ct 997 1000-01, 88 LEd 1250, S.C Const. Art I Sect 3, Art I Sect 14, Art 5 Sect 25 And Statutes 17-23-60, 17-17-170, 16-9-10 It is for this Reason that the original Common-Law Harmless Error Rule Put the burden on the Beneficiary of the error to either prove that there was no injury or suffer A Reversal of his erroneously obtained Judgment. Defense/Plea Counsel And Solicitor's Actions Are in direct opposition of Clearly established Law And meets the Criteria established in Strickland, Cronic, Hill And Boykin For Attorney's Ineffectiveness rendering his Guilty Plea unknowingly And not Voluntary because it was obtained As A Result of his Counsel And Solicitor Falsifying And Fabricating All of the evidence that was used to Accept And obtain guilty Plea.

In Miller, 386 U.S 1, 87 SCt 785 This Court held, "more than 30 years Ago this Court held that the 14th Amend. Cannot Tolerate A State Criminal Conviction obtained by the knowing use of False evidence. Mooney v Holohan 294 U.S 103, 55 Sct. 340, 79 LEd 791 There has been No deviation From that established principle. Napue v People of the State of Illinois 360 U.S 264, 79 Sct. 1173, 3 LEd 2d 1217; Pyle v State of Kansas 317 U.S 213, 63 S.Ct 177, 87 LEd 214 Alcorta v State of Texas, 355 U.S 28, 78 S.Ct 103 2 LEd 2d 9 There Can be No Retreat From That principle."

ARGUMENT II

II) Denial of Effective Assistance of PCR Counsel in presenting Valid Claims of Ineffective Assistance of Defense/Plea Counsel in First (1st) Collateral Attack Proceeding. (PCR)

Petitioner was Assigned Clarissa Joyner To Represent him during his First (1st) PCR Hearing. For Two(2) Years Petitioner Repeatedly Requested, by letters, that she; 1) Amend Application To Insure it Correctly States issue's Petitioner wanted Raised, Addressed and preserved For Future Appellate Review's 2) Contact and Subpeona witness's/Alibi's... 3) Find out Property's Status... 4) Obtain and Present A Copy of the "Alleged" Fully Video Taped burglary... (See Exhibit E), explained in detail.

After numerous Attempts (Exhibit E) To get PCR Attorney To Investigate, Present and Follow petitioners wishes, because As she thoroughly explained to her in those letters, By law (71.1(d)) she had To do it, For no legal, ethical or moral Reason, She refused To do Anything Petitioner Repeatedly Asked her To do For Two(2) Years (Exhibit E). For No Apparent Reason, She refused to Contact, Interview And Subpeona witness's/Alibi's to Prove Actual Innocence, After being given hand written Statements by them with All their Contact Information (Exhibit F), Find out Property Status (Exhibit C - Petitioners inquiry was Responded, Attorney did not Contact, Exhibit C page 4 of 6) Did not Obtain or Present burglary Video Tape to Prove the Contents was Falsified and Fabricated (Exhibit C page 5 of 6, Footnote #4 And Exhibit G - Petitioners Attempt to obtain before PCR hearing but was denied) And did not Amend PCR Application To insure it Correctly States what Claims petitioner wanted Raised And Ruled on

Because by law (71.1(d)) she had to do it because petitioner could not (Exhibit E)

On June 8, 2009 Petitioners PCR hearing was held. PCR Attorney did *Absolutely Nothing* as petitioner *Repeatedly requested* she do For *Two (2) years* And *did not* properly present and preserve ALL OF his Factual Claims or made the slightest attempt to obtain And present Any of the Supporting Evidence To prove each And every Claim For Relief That he *Thoroughly* explained, *in detail*, that she do For Two (2) years. (Exhibit E) To the best of his limited Ability, Petitioner Tried to present And raise each And every ground For Relief, but, due to his inability To understand how to protect his Constitutional Rights (State And Federal) or had A Attorney to insure those rights was protected And All his Claims heard, was not Able to do so or present the Supporting evidence To obtain the Relief he is legally And Factually due. His PCR Application was dismissed with prejudice (Exhibit C)

Immediately After the PCR hearing, Petitioner Contacted, *by letter* (Exhibit G-1) the presiding Judge over his PCR hearing And informed The Judge Of how his Former Counsel And Solicitor Falsified And Fabricated the Evidence used to obtain A Guilty Plea And how he *Repeatedly Requested* his PCR Attorney To obtain the evidence And present his issues, but *without Any Investigation* into his Claims, *Refused* To do As requested (Exhibit G-1) The PCR Judge Responded And Submitted A Copy Of the Complaint to PCR Attorney, in which PCR Attorney inquired As to the Contents Of the letter And Petitioner, In *Complete detail* explained To her, *Again* the Reasons For his dissatisfaction And why he Contacted the Judge (Exhibit G-1) And made his Complaint A part Of the Record.

Once the order of dismissal was Final, Petitioner Again, By letter, contacted PCR Attorney And Requested that she File A 59(E) before the Appeal To have the Judge rule on each And every issue I Tried to Raise on the record To preserve them For Appellate Review. (Exhibit H) PCR Attorney Refused To File A 59(E) motion or File And Serve Notice of Appeal. Petitioner Then Filed A 2nd PCR application Complaining of her Total Abandonment of her rule And Newly discovered evidence. (Exhibit I)

LAW

S.C Const Art I Sect 14, Art I Sect 3, Art 5 Sect 25, 17-23-60, 17-17-170 And S.C Rule 59(5) And 71.1(d) make it mandatory that PCR Attorney's make sure that All available grounds Are raised in the PCR Proceedings. After Filing A Pro SE PCR Application And After being Given Court Appointed Attorney, A Pro SE litigant cannot There After File Any Further Pleadings. Any Amendments To his Application must be made by Counsel. Rule 71.1(d) SCRCP, State v Sanders, 369 S.C 215, 237 SE2d 53; Foster v State, 298 S.C 306, 379 SE2d 907. Thus, if PCR Counsel do not Amend the Pro SE Application, the Applicant has no way to have All Supporting Grounds heard because All Courts (Circuit, Appeal And Supreme Court of S.C) do not recognize nor Respond to hybrid Representation. When Rules, Statutes And Regulations Contain Certain language of a mandatory Nature (Shall, will must) they Are interpreted As Creating A protected due liberty interest. Greenholtz v Inm. of Neb. Penal And Code, 442 US 1, 11-13, 99 S.Ct 2100 2105-06 Hewit v Helms 459 U.S 460, 471-72, 103 S.Ct 864, 871

Because the claim of Ineffective Assistance of Counsel cannot be examined until an Application for PCR Relief is Filed, South Carolina litigants clearly have a right to effective assistance of Counsel in presenting their claim of Ineffective Assistance of Counsel. Smith v Lucey 469 US 387, 105 SCt 830, 83 LEd 2d 821 Coleman v Thompson — US — 111 SCt 2546, 2568 when the state creates a statute that *mandates* the Appointment of Counsel and what they *must do*, such as 71.1(d) then due process *dictates* it self to the actions of PCR Counsel. Petitioners claims are clear, yet at the same time, have been complicated by his Former Attorney and PCR Counsel's actions and inactions.

While the states provide it's citizens with greater protections of their individual rights than does the U.S Constitution.... But *Never* the lesser. Williams v City of Williamston 139 F3d 366 State v Easter 327 SC 121, 489 SE2d 617 Petitioner claims pivots on the mandates of S.C Rule of Civil Procedure 71.1(d) which states in pertinent Part "... Counsel *shall* insure that all grounds available For relief will be raised in the Application and Amended there in as necessary". Furthermore, *Shall* also make it *mandatory* For PCR Counsel to insure that *all grounds* For relief are properly raised And addressed in the PCR Setting. And *Affirmative legal duty* may be Created by statute, Contract, Relationship, status or some other Special Circumstances. Anthrikes v Divers 338 S.C 233, 525 SE2d 542 "The right to seek Appellate review of the denial of PCR is expressly Authorized by state law. S.C Code Ann 17-27-100, Sup. Court Rule 50(g) while we are aware the Constitutional right to Counsel does not extend to discretionary Appeals on collateral attack, we

have ruled that Anders v California 386 U.S 738, 87 S.Ct 1396, 18 L.Ed 2d 493 shall continue to apply in PCR matters. Austin v State, 305 S.C 403, 409 SE2d 395; Johnson v. State 294 S.C 310, 364 SE2d 201; Compare Pennsylvania v Finley, 481 U.S 551, 107 S.Ct 1990, 95 L.Ed 2d 539 Anders requires Appellate Counsel to brief Arguable issues, despite Counsels belief the Appeal is Frivolous, As A Safeguard of the Right to Appeal. In Applying Anders on PCR, we have recognized a prisoners Right to the Assistance of Appellate Counsel in seeking Review of the denial of the PCR. Sup. Court Rule 50(c) expressly provides For Appointment of Counsel to seek Appellate Review on PCR.

Under Austin, A defendant can Appeal A denial of A PCR Application After the Statute of limitations has expired if the defendant either requested and was denied An opportunity to seek Appellate Review or did not knowingly and Intelligently waive the Right to Appeal (see Kinig v. State 308 S.C 348, 417 SE2d 868." This Court has Allowed Successive PCR Applications where the Applicant has been denied "Complete Access" to the Appellate Process. Under PCR Rules, An Applicant is entitled to A full Adjudication on the merits of the Original petition or "one bite at the Apple", Rice v State 305 S.C 448, 452, 409 SE2d 392, 395 This "bite" includes An Applicants Right to Appeal the denial of A PCR Application, And the Right to Assistance of Counsel in that Appeal. (See Rice) In Austin, defendant never recieved A full Procedural "bite at the Apple" because he was prevented From seeking Any Review of the denial of his PCR. Austin Appeals Are Considered "belated Appeals" And Are used to rectify Unjust "Procedural defects" Such As when An Attorney does Not File A Timely Appeal (See Hyde v. State 328 S.C 78, 492 SE2d 76) Dennison v State 639 SE2d 35 Rule 203(c), cert denied State 523 SE2d 753 withdrawn v State 340 S.C 539, 496 SE2d 315, Rule 71.1(d)(9)

"As a method of effectuating the purpose of Rule 71.1(g) sccp and enforcing Austin's entitlement to a PCR Proceeding, this Court held Austin could allege his PCR counsel as ineffective by a Petition for a writ of Certiorari."

Defense/Plea Counsel and PCR Counsel Placed An undue hardship upon Petitioner by Creating A Procedural default And the Facts of this Case Present Far more Serious instances of Attorney misconduct. The Failures Seriously prejudiced A Client who thereby lost what was likely his single opportunity for Federal And state Reveiw of the Unfairness of his imprisonment

In Martinez v. Ryan ---Sct---, 2012 WL 912950, 132 S.Ct 1309, the U.S Supreme Court ruled, "... A state Prisoner when required to raise An Ineffective Assistance of Counsel Claim in A Collateral Proceeding, A prisoner may establish Cause for A Default of that Claim in Two Circumstances 1) State did not Appoint Counsel And 2) Appointed Counsel in initial Reveiw where Claim should have been raised, was ineffective under the standards of Strickland, only if the Can establish Cause To excuse A procedural Default And prejudice From A Violation of Federal law." Coleman 501 U.S at 750, 111 S.Ct 2546 USCA Const Amend 6

The defendant requires the guiding hand of Counsel at every step in the Proceeding Against him, without it, though he be not guilty, he Faces the Danger of Conviction because he does not know how to establish his Innocence." But" when Attorney error Amounts to Constitutionally Ineffective Assistance of Counsel, that error is imputed to the state (For the state has failed to comply with the Constitutional requirement to provide effective Counsel) rendering the error external to the petitioner. Coleman, Supra, at 754, 111 S.Ct 2546 ; Carrier Supra, at 488, 106 S.Ct 2639 An indigent Criminal defendant is Constitutionally entitled to An effective Attorney in his "one And

only Appeal" as of right, Douglas v California, 372 U.S 353, 357, 358 83 S.Ct 814, 817, 9 LEd 2d 811 Ellis v Lucey 469 U.S 387, 105 S.Ct 830 83 LEd 2d 821

Petitioners Attorney essentially "Abandoned" him, As evidenced by Counsels *Total Failure* to Communicate with petitioner or respond to petitioners many inquiries And Requests over A period of-Two(2) years. Petitioners Allegations would Suffice to establish Extraordinary Circumstances beyond his Control. Common Sense dictates that A litigant Cannot be held Constructively responsible For the Conduct of An Attorney who is NOT operating As his Agent in Any meaningful Sense of that word. See Coleman, Supra, At 752-754, 111 S.Ct 2546 The rule that An Attorneys Act And oversight Are Attributed to the Client is Relaxed where Client HAS A Constitutional Right To effective Assistance of Counsel, where A State is Constitutionally obliged to Provide An Attorney but Fails to provide An effective one, The Attorneys Failures that Fall below the Standard set Forth in Strickland v Washington, 466 U.S 668, 104 S.Ct 2052, 80 LEd 2d 674 Are Chargeable to the State, NOT the prisoner. See Murray v Carrier, 477 U.S 478, 488, 106 S.Ct 2639 91 LEd 2d 397 In other words, it is NOT the quantity of the Attorney errors that matters but it is that Constitutes A Violation of petitioners Right to Counsel, So that the errors must be seen As An External Factor, i.e, "imputed to the State". See also Ellis v Lucey 469 U.S 387, 396, 105 S.Ct 830, 836, 83 LEd 2d 821 Cuyler v Sullivan 446 U.S 335, 344, 100 S.Ct 1708, 1716, 64 LEd 2d 333. In Chronic it states by the Court, "... There is An *Additional State-Guard* Against Miscarriages of Justice in Criminal Cases... That *State Guard* is the Right to effective Assistance of Counsel, which, As it is

Court has indicated, may in a particular case be viewed by even an isolated error of counsel if that error is sufficiently egregious and prejudicial U.S. v. Cronic, 466 U.S. 648, 657, n. 20, 104 S.Ct. 2039, 2046, n. 20, 80 LEd 2d 657 See also Strickland v. Washington, 466 U.S. at 693-696, 104 S.Ct. at 2067-2069 the Supreme Court in Roe v. Flores-Ortega 528 US 470 held that "[A lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable and is per se, deficient".

ARGUMENT III

PCR Judge decision to dismiss 2nd PCR Application as successive and time barred, is contrary to clearly established State and Federal laws and do (Claims) support a Cognizable Claim For PCR Relief. Judge erred.

Petitioners 2nd PCR Application (Exhibit II) listed the following Claims 1) Ineffective Assistance of PCR(Appellate) Counsel 2) Newly discovered evidence (Fingerprint Analysis) And 3) Fraud upon the Court (Falsified And Fabricated Evidence) Along with A memorandum in support of the Application with Exhibits. (Exhibit II) Respondent And petitioner made Returns And objections (Exhibit III) PCR Judge signed the Final order And Ruled the Application is Successive, Time barred And do not Support A Cognizable Claim For PCR Relief. (Exhibit IV) Petitioner Filed A 59(E) motion, which was denied, Filed And Secured notice of Appeal, which was denied As well (Exhibit VI)

LAW

S.C Code Ann 17-27-90 Provides that: "All grounds For Relief Available to An Applicant... must be raised in his original, Supplemental or Amended Application. Any ground... not so raised... Finally Adjudicated.. That Resulted in the Conviction or Sentence.. may not be the basis For 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. The record, along with the exhibits presented, Clearly Shows that Any And All petitioners grounds was inadequately raised or not raised At All And All the grounds And Defaulted Claims are

extend to the petitioner. Coleman, Supra, at 754, 111 Sct 2546
Carrier, Supra, at 488, 106 Sct. 2639 *All grounds must be raised*
in the original, Supplemental or amended application and 71.1(d)
SCRCP make it *mandatory* that PCR attorney make sure *all available*
grounds are raised in PCR proceedings because after being appoint-
ed Counsel, Prose litigant *cannot move after* file any further Pleading.
Any amendments to his application *must* be made by Counsel.
Martinez, Coleman, Anders, Alice, Austin, Whitehead, Strickland, Cronic
SC Const Art I Sect 14, Art I Sect 3, Art V Sect 25, 17-23-60, 17-17-170
IF Counsel (PCR) moves *No Merit* To Follow *mandated* State statute, Clearly
Counsels Actions would show Petitioners Ground was *inadequately* and
Not raised or asserted because Petitioners was *prevented*, by state statute
from Submitting Anything in his behalf because S.C Courts do not recogni-
ze hybrid representation in the PCR setting (See SCRCP Rule 71.1). Thus, if
PCR Counsel does not Amend the application, Petitioner has *no way* to have
all his Supporting grounds heard. Surely the omissions are Apparent
From A Straight Review of the record ... PCR Counsel Failed and Neglected
to Follow the mandates prescribed by the SCRCP and in doing so, Violated
petitioners Inalienable rights that are protected by the 14th Amendment
Due Process Clause. The *Constitutional Guarantee* applies to pre-Trial
Critical Stages that are part of the whole course of a Criminal proceeding,
A Proceeding in which defendants Cannot be presumed to make Critical
decisions without Counsel's Advice. This is Consistent to with the rule
that defendants have a right to effective Assistance of Counsel on Appeal
even though that Cannot in any way be Characterized as part of the Trial.
Hulbert v Michigan, 545 U.S 605 Evitts v Lucey 469 U.S 387
In Martinez v. Ryan — S.Ct — 2012 WL 912950, 132 S.Ct 1309 (March 2012)

The U.S Supreme Court held, "A state prisoner when required to raise an Ineffective Assistance of trial claim in collateral proceeding, a prisoner may establish cause for a default of that claim in two circumstances 1) State did not appoint counsel and 2) Appointed counsel in initial-review where claim should have been raised, was ineffective under the standards of Strickland while confined to prison, the prisoner is in no position to develope the evendentiary basis for a claim of ineffective assistance of counsel, which, often times on evidence outside the trial record. An Attorney's errors during an Appeal on direct review may provide cause to excuse a procedural default; For if the Attorney Appointed by the state is ineffective, the prisoner has been denied the process and opportunity to comply with the states procedures and obtain an Adjudication on the merits of his claim. without *Adequate legal assistance* in an initial-review collateral Proceeding, a prisoner will have similar difficulties vindicating a substantial ineffective assistance at trial claim. The same would be true if the State did not appoint an Attorney for the initial review collateral Proceeding. A Prisoners inability to present his claims is of particular concern because the right to effective trial counsel is a bedrock principle in this nations justice system. the collateral proceeding is the equivalent of a prisoners direct Appeal as to that claim, because the State habeas Court decides the claims merits, no other court has addressed the claims and defendants are *generally ill equipped* to represent themselves where they have no brief from counsel and no court opinion addressing the claim. Halbert v. Michigan 545 U.S 605, 617, 125 S.Ct 2582, 162 L.Ed 2d 552

PCR Act S.C Code Ann 17-27-10 to 160 States a Applicant may commence a PCR Action on the following grounds 1) That the conviction and/or sentence was in violation of the Constitution of the United States or the Consti-

Tution or laws of this State 4) that there exists evidence of material facts. not previously presented and heard that requires vacation of the Conviction or Sentence in the interest of Justice and 6) that the Conviction or Sentence is otherwise subject to collateral attack upon any ground of alleged error available under any Common law, statutory or other writ, motion, petition, proceeding or remedy ect.

It's a fundamental Connerstone of due process that the Constitutional Cannot Tolerate A Criminal Conviction obtained by knowing use of false evidence. U.S Const. Amend IV #7 Applicability to States, U.S.C.A Const Amend 5, 14, Giglio v U.S 405 U.S 150, Miller v U.S 263 F3d 1, Miller v State 386 U.S 28, Napue v Illinois 360 U.S 3164, S.C Const Art I Sect 14, Art I Sect 3, Art II Sect 25, 17-23-60, 17-17-170, RIDE Rule 407, 413 Petitioner has made A Sufficient showing And prima facie case To establish that the likelihood of falsified And fabricated evidence, that was fabricated by his Attorney And Solicitor has indeed taken Place (Video Tape Contents + Fingerprint Analysis) because Respondent has not produced Any documentation To Refute the documentation petitioner has Presented to show his guilty Plea was obtained in violation of the Constitution of the U.S or the Constitution or laws of this State, Evidence of material Facts not previously presented And heard (Video Tape Contents and Fingerprint Analysis) Requires vacation of the Conviction in the interest of Justice And is subject to collateral Attack upon any ground of Alleged error... The entire record, As it pertains To this case (Guilty Plea Trans., Direct Appeal, PCR 1st, PCR 2nd, letters, Petitions, motions, Discovery, orders) Substantiates the State has Produced Nothing that Factually disputes Petitioners Documentation. This Court must not rely on it's decisions based off of could be's, what if's or Just might's, the untangible, but only base it's decisions of Actual Facts, the Tangible.

B) Newly discovered Evidence (Fingerprint Analysis)

In the PCR Application (Exhibit J) on page 3, question 10(b) it states "Newly discovered Evidence (Fingerprint Analysis)." The record will reflect, that petitioner has presented (Exhibits-All) that *Prior* to the June 9, 2009 PCR hearing, *nobody never* revealed or discussed any Identified Fingerprints recovered in relation to this case, until *under oath*, Former Counsel Testified he received Documentation and they do exist (Exhibit C page 5 of 6 and footnot #3)

On the memorandum supporting the PCR Application on page 14, 15 of 30 (Exhibit J) it states; "It was never discussed or revealed until this hearing by Applicants Attorney And even until this very day, the State in *no proceeding* ever revealed, discussed [or produced] A Fingerprint Analysis. Upon hearing Defense Attorney's Testimony, *under oath* Concerning this *new evidence*..."

Until June 9, 2009 (PCR hearing) For *four (4) years*, Petitioner nor Any state Agent, Agency or Attorney For the state (Solicitor, Atty. General) or Any court within the State *ever* present, discuss, reveal or produced And documentation that identifies petitioners prints From the Crime Scene And *never* knew of Such Documentation until Former attorney *under oath* testified he received one, but in *No Record* in Regards to this Case, do this "Evidence" exist. Petitioner Claims Fit neatly within the discovery rule 17-27-10 to 160 S.C Code Ann. And the States Claim in it's Return to Petitioners 59 (Exhibit I) that, "Applicant, by his own Admission in the motion, Submits that at the Time of the 2009 PCR hearing, he was in fact Aware of all the evidence he now contends is newly-discovered", is a *clerical* disclosure of the Facts where Petitioner Plainly and Clearly in that *new motion* shows how *nobody* knew of this "Evidence" before his testimony, *four (4) years later*, nor can the State *produced* to prove otherwise. Petitioner's entire Case File From the initial Arrest, to date will produce anything that will support the States Contentions or the Judges decision

When it's Clear by After-discovered evidence that a witness was mistaken

inquiring the only or controlling testimony to material fact, or that the testimony or witness on which the verdict proceeded was founded on particular circumstances which have been clearly falsified, a new trial should be granted. Turner v. So. Ry. Co. 121 SC 159, 113 S.E 360

Conclusion

An application for writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted *unless it appears* that ... (ii) circumstances exist that render such process ineffective to protect the rights of the applicant (E2) If the applicant failed to develope the factual basis of a claim in state court proceeding and the court shall not hold an evidentiary hearing on the claim unless (A) the claim relies on (ii) a factual predicate that could not have been previously discovered through exercise of due diligence; and (B) the facts underlying claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact finder would have found the applicant guilty of the underlying offense and (F) If the applicant challenges the sufficiency of the evidence ... S.C. Const. Art V Sect 25, Art I Sect 3, Art I Sect 4

It is the prisoners purpose in this petition to test the substantive due process protections and legality of his detention. McCall v. State 247 S.C 15, 145 S.E2d 419. The only relief that can be granted is release from prison. Substantive due process protections are limited to a number of issue's. This would mean a state action which deprives a person of life, liberty or property which is guaranteed by the more specifically relevant provision of the Constitution, the 5th and 14th Amend; so there must be a rational basis for the deprivation when the judiciary characterize it as arbitrary.
Hamilton v. Board of Trustees of Oconee Sch. Dist. 282 S.C 519, 319 S.E2d 717

Generally, the court *must* conduct an evidentiary hearing if your *alleged facts* which if found to be true, would have entitled you to habeas relief.

Turner v. U.S., 18 F3d 778, 781, 784-85

The Federal Constitution is the "Supreme Law of the Land" and the obligation to guard and enforce every right secured by the Constitution rests on the State Courts equally with the Federal Courts. Petitioner is imprisoned under a judgment invalid because obtained in violation of Procedural Guarantees protected against State invasion through the 14th Amendment. Smith v Bennett 365 U.S 708, 334, 81 Sct 515, 574, 5L, L Ed 2d 559. Indeed, the S.C Supreme Court has granted relief based on "Ineffective Assistance of Pcr Counsel" despite the fact that the right to Pcr Counsel arises from 7th, 1 SCLCP and not from the Constitution. Washington v State 391 S.C 330, 705 SE2d 833. Due to Summary Procedural Irregularities by Counsel and Pcr Counsel, Petitioner Habeas Corpus should be granted. "No Evidence" Criterion of Thompson v. Louisville, 362 U.S 199, 80 S.Ct 624, 4 L Ed 2d 654 was violated that a Conviction based upon a record *wholly devoid of any Relevant evidence* of a Crucial element of the offense charged is Constitutionally infirm. This secures to an accused the most elemental of due process.

Specific Allegations before the Court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the duty of the Court to provide the necessary facilities and procedures for an adequate inquiry.

Petitioner requests that a evidentiary hearing be conducted, an Attorney Assigned and his State habeas Corpus petition be granted due to petitioner being denied *Complete Access* to present a Defense, pursue an Appeal and effective assistance for each proceeding. Due to this *Complete denial* of access to the Courts and Summary errors attributed to errors of the Petitioner, The Granting of his habeas Corpus would cure this "miscarriage of Justice" by Prosecuting Attorneys Conduct, neglect and misconduct.