

STATE OF SOUTH CAROLINA  
IN THE COURTS OF APPEALS

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Appeal from Richland County

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Clifton Newman, Circuit Court Judge

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IN THE MATTER OF THE CARE  
AND TREATMENT OF TIMOTHY GETER

Petitioner

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APPELLATE CASE NO. 2013-000695

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**PETITION FOR REHEARING**

**AND**

**REHEARING EN BANC**

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**RECEIVED**

JUL 14 2014

**SC Court of Appeals**

NOW COMES THE PETITIONER, Timothy Geter, proceeding pro-se, who has received a decision of this Court dated June 25, 2014, that was received on July 2, 2014. In the decision it was determined that the Petitioner's Anders Brief was accepted by the court and court appointed counsel was allowed to be dismissed. The Petitioner submitted a Response to the Anders Brief that was also said to be considered.

Pursuant to Rule 221(a) & 219(a), South Carolina Appellate Court Rules (SCACR), the Petitioner hereby request this Court allow a Rehearing and an assemblage of the En Banc Court to secure or maintain uniformity of its

decisions.

This Petition is in accordance with Rule 240(c) SCACR, and the precedent establish in Arnold v. Carolina Power & Lights, Co., 167 SE 35 (SC 1933). The Petitioner will show the following points that were either overlooked or misapprehended by the Court necessitating that a rehearsing take place because:

**THE DECISION OF THE COURT IGNORED THAT A MATTER OF SUBJECT MATTER JURISDICTION WAS BROUGHT FORTH, THAT HAD PRECEDENT.**

The Petitioner raised a question in his Pro-se Brief that dealt with subject matter jurisdiction. The question of subject matter jurisdiction is a question of law, for the court. Hammer v. Hammer, 730 SE2d 874 (Ct. App. 2012). The concept of jurisdiction refers to the authority of a court over a particular person or the authority of a court to entertain a particular action, but the concept does not refer to the validity of the claim on which an action or person is based. Cribb v. Spathold, 676 SE2d 714 (Ct. App. 2009).

The subject matter here, a hearing to determine whether the Petitioner fits the requirements to be involuntary civilly confined, requires a particular predicate offense. That offense must be one adjudicated by the court in which a conviction was upheld. The fact that the legislature choose to repeal the statute §16-15-140, without putting a saving clause referencing the SVPA, or conforming amendment, clearly meant that once the effective date occurred, that statute was repealed and any claim referencing it, thereafter, done away with it.

The Petitioner has a state and federal constitutional right to liberty, through the Due Process Clause. Subject matter jurisdiction can

not be waived or forfeited. Gonzalez v. Thaler, 132 S.Ct. 641, 648 (2012)

Petitioner's Counsel on appeal, and trial counsel, was overly ineffective, prejudicing the Petitioner for failing to bring forth the question of Subject matter jurisdiction before the trial Court or this appellate body. Strickland v. Washington, 466 U.S. 668 (1985).

The Sixth Amendment to the U.S. Constitution provides that anyone accused of a crime is guaranteed the right to competent legal counsel. The constitutional rights of criminal defendants are granted to the innocent and the guilty alike, and consequently, the guarantee of effective assistance of counsel does not belong solely to the innocent or attach only to matters affecting the determination of actual guilt. Lafler v. Cooper, 132 S.Ct. 1376, 1388 (2012).

Though the word "crime" is used in the above citation and in the constitution, it is established precedent in sister states, that the effective assistance of counsel must also be provide in SVPA commitment hearings. It is widely accepted that due to the potential loss of personal liberty the SVPA imposes upon individuals adjudged to be sexually dangerous the right to the effective assistance of counsel under the sixth Amendment to the Constitution of the United States. People of the State of Illinois v. Bailey, 639 N.E.2d 1313 (1994). On September 22, 2005, in Manning v. State of Florida, (No. 1D03-5106, Fla.App., September 22, 2005), a Florida Court of Appeals said that those subject to involuntary civil commitment as SVP has a liberty interest at stake, and therefore has the right to the effective assistance of counsel at all significant stages of the commitment process. These cases would be considered exactly on point, standing on all fours.

The U.S. Supreme Court, using precedent that was clearly established, stated "The right to the effective assistance of counsel at trial is a bedrock principle in our justice system. It is deemed as an "obvious truth" the idea that "any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." Gideon v. Wainwright, 372 U.S. 825, 837, 114 S.Ct. 335, 344 (1963).

"Indeed the right to counsel is the foundation for our adversary system. Defense counsel test the prosecution's case to ensure that the proceedings serve the function of adjudicating guilt or innocence, while protecting the rights of the person charged."

Applying these principle here, the Court should agree that section §44-48-30, read as a whole, did not show, at the time of the Petitioner's hearing, Lewd Act upon Minor, S.C. Code Ann §16-15-140, as a valid statute for the purpose of Civil Commitment. Thus, the State nor South Carolina Department of Mental Health should be allowed to hold Petitioner, since Lewd Act upon a Minor was use as a primary factor to consider whether Petitioner satisfied the definition of a sexually violent predator and at the time of the procedure it was not a requirement by statute for the sexually violent predator act §44-48-10 thru §44-48-170.

The Rules of Statutory Construction and legislative intent clearly come into play here. Gay v. Arial, 673 SE2d 418 (Ct. App. 2009). The legislature repealed the offending statute, making it not valid as a qualifying offense after the effective date of the repeal. There was no saving clause or conforming amendment to Act 255. Chem-Nuclear Systems, LLC v. S.C. Bd. Of Health and Env'l Ctrl., 648 SE2d 601 (SC 2007).

This Court has the inherent power to do all things reasonably

necessary to insure that just results are reached to the fullest extent possible. State v. Langford, 735 SE2d 471 (SC 2012), Robinson v. Estate of Harris, 698 SE2d 801 (SC 2010).

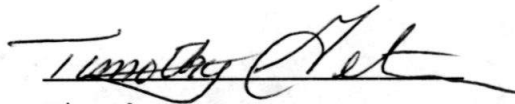
Inherent power of courts to do all things reasonably necessary to insure that just results are reached to fullest extent possible necessarily includes looking at the matter of jurisdiction of the subject matter the previous court entertained.

**CONCLUSION**

Based on the above, the Petitioner's Petition for a Rehearing should be Granted, and the appeal be revisited based on the precedent within.

**THIS THE PETITIONER HUMBL Y PRAYS!**

Respectfully Submitted,



Timothy Geter

Petitioner, Pro se,

7901 Farrow Road

Bldg. 3, 3<sup>rd</sup> Floor,

Columbia, S.C. 29203-3220

July 12, 2014

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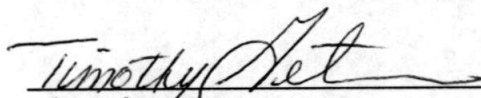
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**CERTIFICATE OF SERVICE BY MAIL**  
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The undersigned Petitioner hereby certifies that a true copy of the Petition for Rehearing was served on counsel for the Petitioner via U.S. Mail, to: Deborah R. J. Shupe, Esquire, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211-1549; this 12 day of July, 2014.

Respectfully Submitted,

  
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Timothy Geter  
Pro se Petitioner  
7901 Farrow Road  
Building #3, 3rd Floor  
Columbia, South Carolina 29203

**RECEIVED**  
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