

STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO GREENVILLE COUNTY

Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2013-002381

Joseph Dominick Urato, #349299 PETITIONER

v.

State of South Carolina RESPONDENT

**APPELLANT'S MOTION
TO SUPPLEMENT THE RECORD ON APPEAL
PURSUANT TO RULE 212(b), SCACR**

JOSEPH DOMINICK URATO
#349299
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472

PETITIONER, *pro se*

Other counsel of record:

Karen Ratigan, Esq.
Assistant Attorney General
P.O. Box 1549
Columbia, SC 29211-1549
Attorney for Respondent

Lanelle Cantey Durant
Assistant Appellate Defender
South Carolina Office of Appellate Defense
P.O. Box 1589
Columbia, SC 29211-1589
Attorney of Record for Petitioner

Joseph Dominick Urato, the *pro se* Petitioner in the afore-captioned petition for writ of certiorari from the denial of post-conviction relief in the Greenville County Court of Common Pleas; respectfully moves this Honorable Court, pursuant to Rules 212(b) and 240, South Carolina Appellate Court Rules, for leave to Supplement the Record on Appeal with the July 15, 2014 Affidavit of John J. Urato (attached). In support of this motion to supplement the record the Petitioner would show this Court the following:

- 1) Mr. John Urato is the father of the Petitioner herein and is a retired member of the New Jersey Bar;
- 2) Mr. John Urato's affidavit specifically details conversations with trial counsel Randall Chambers, Esquire detailing the specific sentence and sentence parameters Petitioner would receive in exchange for entering a plea of guilty, which directly refutes Mr. Chamber's testimony at the August 28, 2012 post-conviction evidentiary hearing and supports the post-conviction relief claim regarding the induced plea for ten (10) years;
- 3) Mr. John Urato's affidavit specifically details conversations with Petitioner's post-conviction relief counsel Susannah Ross, Esquire and related the plea information conversation with Mr. Chambers to Ms. Ross;
- 4) Mr. John Urato's affidavit specifically details that Ms. Ross did not ask Mr. John Urato to execute an affidavit or video deposition concerning the conversations with trial counsel in regards to the plea or relate that the burden of proof was on Petitioner at post-conviction relief to present witness(es) to substantiate the allegations raised;
- 5) That the affidavit of Mr. John Urato is relevant to the issues raised in the writ of certiorari and would change the outcome of the proceedings is considered by the post-conviction court;
- 6) Mr. John Urato's affidavit is not cumulative;

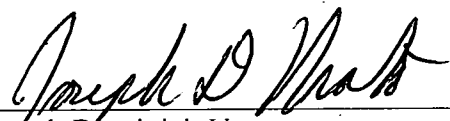
- 7) Mr. John Urato's affidavit was not available until after Judge Robin B. Stilwell's October 8, 2013 order of dismissal;
- 8) That the affidavit of Mr. John Urato is substantial evidence under the scope and review of the standard applied at post-conviction relief and directly affects the substantial rights of the Petitioner;
- 9) That the Affidavit of Mr. John Urato would change the minds of reasonable jurists if considered by the Court as it directly affects the merits of the case;
- 10) That the supplementation of the Record with Mr. John Urato's affidavit would not prejudice the Respondent in any manner, but would provide clarity to the matter; and
- 11) That consideration of Mr. John Urato's affidavit by this Court would provide Petitioner the relief to which he was entitled following the August 28, 2013 hearing before the Honorable Robin B. Stilwell.

CONCLUSION

WHEREFORE, based on the foregoing facts and attachments, the Petitioner prays this Honorable Court grant leave to Supplement the Record on Appeal with the affidavit of Mr. John Urato, pursuant to Rule 212(b), SCACR.

July 23, 2014

Respectfully submitted,



Joseph Dominick Urato
#549299
Lieber Correctional Institution, SA-47
Post Office Box 205
Ridgeville, South Carolina 29472-0205

PETITIONER, *Pro se*

GENERAL AFFIDAVIT

State of Hawaii
County of Honolulu

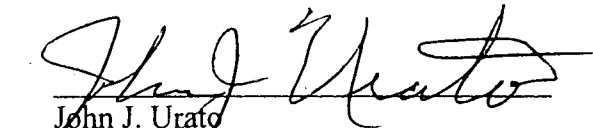
BEFORE ME, the undersigned Notary, Susie Sipelii,

on this 15th day of July, 2014 personally appeared John J. Urato, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I am the father of Joseph D. Urato and am a licensed member of the NJ State Bar, retired. I offer this affidavit for its relevance to C.A. No. 2012-CP-23-3617. After Joseph's plea was entered on January 18, 2012 the sentence handed down by the court was dramatically different than had been agreed to by Joseph's defense attorney and the prosecution. The Attorney, Mr. Randy Chambers and I spoke on that day prior to a plea being entered. Mr. Chambers advised me that if my son went to trial and was convicted, his term in prison would be between 18 and 30 years and to expect it to be near the higher end due to his prior involvement with law enforcement. He also explained that the difference in a plea as opposed to a conviction would allow for parole after serving 65% of the sentence as opposed to 85% of the sentence. I requested the attorney to advise Joseph that "IF" and only "IF", the State was precluded from bringing any further actions against him, then, and only then, should he plead. This was agreed to by the prosecution and the plea was entered. Subsequently, I was advised by Joseph that he was sentenced to 18 years and not 10 years as had been represented to him and to me by Mr. Chambers.

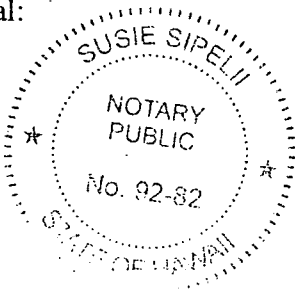
Thereafter, I spoke to an attorney, Ms. Susannah Ross on more than one occasion and advised her of these circumstances. She was the attorney who handled the post

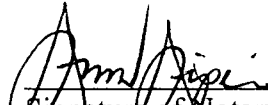
conviction relief. She advised that after receiving a transcript she would again speak to me. This never happened even though I personally tried to reach her on several occasions.


John J. Urato
1920 Ala Moana Blvd., #1611
Honolulu, HI 96815

Subscribed and sworn to before me, this 15th day of July, 2014.

Notary Seal:





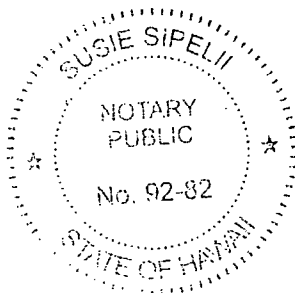
Signature of Notary
Susie Sipelii

Typed name of Notary

NOTARY PUBLIC

My commission expires:

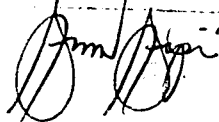
December 18, 2017



07/15/2014

02

General Affidavit
of Joseph D Urato



07/15/2014

Joseph Dominick Urato
#349299
Lieber Correctional Institution SA-47
P.O. Box 205
Ridgeville, SC 29472-0205

July 24, 2014

Lanelle Cantey Durant
Assistant Appellate Defender
South Carolina Office of Appellate Defense
Post Office Box 1589
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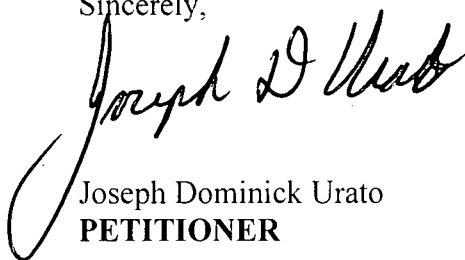
Re: *Joseph Dominick Urato, #349299, Petitioner, v. State of South Carolina, Respondent*
Appellate Case No. 2013-002381

Dear Ms. Durant:

Please find enclosed Petitioner's Motion to Supplement the Record in the aforementioned case. Although not required to serve a copy of the *pro se Johnson* petition on either party, where I am filing documents other than the *pro se* petition (motion to supplement the record), which does require proof of service, I have enclosed a courtesy copy of the *pro se* petition where the petition relies upon the affidavit that directly refutes trial counsel's testimony and establishes that PCR counsel failed to obtain an appropriate witness to meet the burden of proof in this regard.

With kindest regards, I am,

Sincerely,



Joseph Dominick Urato
PETITIONER

Cc: The Honorable Daniel E. Shearouse
Karen Ratigan, Esq.

RECEIVED

JUL 30 2014

S.C. SUPREME COURT