

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

SEP 15 2014

S.C. Supreme Court

DARNELL HUDSON

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000407

APPENDIX

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

IN THE COURT OF COMMON PLEAS

DARNEILE HUDSON, 227328)

Full name and prison number (if any) of Applicant)

2013-CP-23-00993

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIEBER CORR INST, P.O. BOX 205
RIDGEVILLE S.C. 29472
2. Name and location of Court which imposed sentence GREENVILLE COUNTY
COURT OF GENERAL SESSION
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 95-GS-23-6102, ARMED ROBBERY

- (b) 95-GS-23-6103, ABHAN
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 10-26-1995, SENTENCE TO Y.O.A. 1-6 YRS.-AR
- (b) 5 YRS PROBATION, ABHAN
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) APPLICANT LACKED GROUNDS FOR APPEAL

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) NEWLY-AFTER-DISCOVERY EVID, PROSECUTION
- (b) FAILED TO DISCLOSE FAVORABLE EVID, INVOLUNTARY
- (c) GUILTY PLEA; SEE ATTACHMENTS TO SUPPORT CLAIMS
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) CLARK V. STATE 434 SE 2d 266
- (b) GIBSON V. STATE 514 SE 2d 320
- (c) SANCHEZ V. U.S. 50 F.3D. 1448
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.

ii.

iii.

(b) the proceedings in which each ground was raised:

i.

ii.

iii.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) APPLICANT BY PRO-SE DUE DILLIGENCE JUST
- (b) DISCOVERED THE NEWLY-AFTER-DISCOVERED
- (c) EVID. SEE ATTACHMENT TO SUPPORT CLAIM
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? YES
- (b) your trial, if any? _____
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. MR. HAI W. ROACH 23 MILLS AVE
GREENVILLE S.C. 29603
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. AT PLEA AND SENTENCING
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

TO REVERSE CONVICTION AND SENTENCING AND
GRANT APPLICANT A NEW TRIAL.

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

I, DARNEILE HUDSON # 227328

, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Darnelle Hudson

SWORN to and subscribed before me this 7th
 day of February, 2013.

Sylvia Jones (L.S.)
 Notary Public

My Commission Expires: 1/24/2018

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, DARNEILE E. HUDSON #227328, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Darneile E. Hudson
Applicant

SWORN or affirmed to and subscribed before me this
7th day of February, 2013.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

2013 FEB 19 PM 4:40

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE

IN THE COURT OF COMMON
 PLEAS FOR THE 13TH CIR.

DARNEIL E. HUDSON # 227328

ATTACHED TO MOTION...

v.

SWORN AFFIDAVIT OF
 APPLICANT PURSUANT TO
 S.C.R. CRIM.P. RULE 29(B)

STATE OF SOUTH CAROLINA

MOTION FOR NEW TRIAL

2013-CP-23- 00993

THE SWORN AFFIDAVIT OF DARNEIL E. HUDSON

I AFFIANT, DARNEIL E. HUDSON 227328, DECLARES UNDER PENALTY OF PERJURY THAT ON THIS SAID DATE OF 1-23-2013 THE FORGOING STATEMENT ALLEGED WITHIN THIS AFFIDAVIT IS TRUE AND CORRECT.

THAT ON THE DATE OF 1-23-2013 I AFFIANT DISCOVERED NEWLY AFTER-DISCOVERED EVIDENCE THAT THE PROSECUTION OF GREENVILLE COUNTY IN THE YEAR OF 1995 WITHHELD FAVORABLE EVIDENCE FROM AFFIANT DEFENSE BY FAILING TO DISCLOSE SUCH EVIDENCE UNDER RULE (5) OF S.C.R. EVID. UNDER (A)(1)(C) AND (D). THE VICTIM'S MENTAL HEALTH RECORDS, REVEALING THE VICTIM SUFFERING FROM A MENTAL DISABILITY, 2) THE HOSPITAL RECORDS REVEALING THE VICTIM SUFFERING FROM MEMORY LOSS THAT WAS CAUSED BY THE VICTIM SHOOTING HIS SELF IN HIS HEAD AND 3), THE POLICE INVESTIGATION RECORDS CONCERNING THE VICTIM ATTEMPT TO COMMIT

SUICIDE. THE PROSECUTION WAS IN POSSESSION OF THE INVESTIGATION REPORTS OF THE INCIDENT INVOLVING THE VICTIM SHOOTING HIMSELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE, AND BY THEIR INVESTIGATION OF THE VICTIM BACK GROUND HISTORY KNEW OF THAT FAVORABLE EVIDENCE AND FAILED TO DISCLOSED THAT EVIDENCE TO THE DEFENSE. AFFIANT ALLEGES THAT THE VICTIM WROTE A STATEMENT AND PICKED HIM OUT OF A PHOTO LINE-UP IN WHICH THE VICTIM ALLEGINGLY CLAIM THAT AFFIANT ARMED RUBBED HIM AND ASSAULTED HIM ON MARCH 13, 1995. ON THE DATE OF OCTOBER 26, 1995 AFFIANT PLEAD GUILTY TO CHARGE'S AND WAS SENTENCE TO A YEAR (1-4) YR. SENTENCE AND (5) YR. PROBATION. AT NO TIME DID ATTORNEY HAI ROACH KNOW OF THE VICTIM SHOOTING HIS SELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE PRIOR TO THE GUILTY PLEA HEARING AND BY THE PROSECUTION FAILING TO DISCLOSE THAT EVIDENCE TO ATTORNEY HAI ROACH, ATTORNEY HAI ROACH WAS EXCUSABLY IGNORANT TO THE EXISTENCE OF SUCH EVIDENCE AND COULD NOT BY DUE DILIGENCE COULD HAVE DISCOVERED THAT EVIDENCE. AFFIANT ALLEGES THAT HE NEVER KNEW OF THE VICTIM IN NO WAY AND COULD NOT HAVE DISCOVER THE THAT FAVORABLE EVIDENCE IN NO WAY WHAT SO EVER DUE TO THE LACK OF KNOWLEDGE OF THE VICTIM. ON THE DATE OF 1-23-2013 WHILE TALKING TO ANOTHER PRISONER FROM GREENVILLE COUNTY S.C. JERMAN BARTON HE DISCOVERED THOSE FACTS ABOUT THE VICTIM SHOOTING HIS SELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE AND THAT THE VICTIM SUFFERED FROM A MENTAL DISABILITY AND BRAIN DAMAGE AFFECTS THAT AFFECTED HIS MEMORY.

AFFIANT DECLARES UNDER PENALTY OF PERJURY THAT THE FACTS IS TRUE AND CORRECT.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 7th DAY
OF February 2013

Sylvia Jones
NOTARY

EXP: 1/24/2018

Samuel Hudson
SIGNATURE

EXHIBIT
B

Sworn affidavit of Margaret Fairfax.

I Margaret Fairfax declare under penalty of perjury that on the said day of April 29th 2013 the forgoing statement alleged within the affidavit is true and correct.

On the said day April 29th 2013 I Margaret Fairfax located Hashawsan K. Brown at location of [REDACTED] in Greenville S.C. I questioned him concerning the mental health records and concerning the alleged incident that occurred concerning him allegedly shooting himself in the head. He confirmed the incident saying he agreed to it. He is willing and knowingly voluntarily has agreed to turn over his mental health records and hospital records. He has also submitted an affidavit to this effect. He is not of any kin blood or relative and has not been promised anything for his affidavit or his records. I Margaret Fairfax declare under penalty or perjury the facts are correct.

Signature

Witness

Margaret S. Fairfax
Doris Wake

Cathy S. Campbell

Notary Signature

My Commission Expires May 22, 2016

Exp. Date

EXHIBIT

C

June 1st 2013

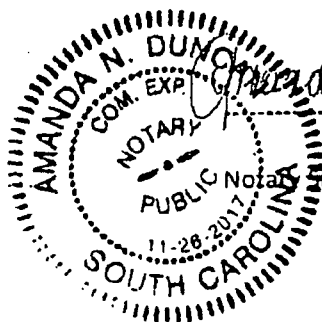
I Margaret Dora Fairfax declare under the penalty of perjury that the statement that I am writing is true and correct. That on the day of June 1st 2013 I did contact Hashawsan K. Brown at the said address [REDACTED] which he is a resident of Greenville County in the state of South Carolina 29605, concerning an alleged accident of him identifying my grandson Darnell Hudson in which an armed robbery took place on March 13th 1995. In which Hashawsan K. Brown stated he did not recall the incident that took place and that he never has known of my grandson Darnell Hudson. He stated that he supposedly identified Darnell Hudson. I Margaret Dora Fairfax declare under penalty of perjury that these facts are true and correct.

Margaret D. Fairfax
Signature

6/12/13
Date

[Signature]
Witness

06/15/13
Date



Amanda N. Duncan
Signature

06/15/13
Date

EXHIBIT

D

June 1st 2013

I Crystal M. Silver declare under penalty of perjury that the forgoing statement is true and correct. That on the date of June 1st 2013 that I helped my mother Margaret Fairfax locate Hashawsan K. Brown at the address of [REDACTED] located in Greenville County in South Carolina. I witnessed the questioning of my mother Margaret Fairfax to Hashawsan K. Brown concerning the allegations that he supposedly identifying my son Darnell Hudson in an alleged armed robbery that took place on March 13th 1995. In which he Hashawsan K. Brown saying he was not and didn't recall the incident of being robbed by my son. And also I witnessed him state that he did shoot himself in the head in the attempt to commit suicide. The forgoing statement is true and correct. I Crystal M. Silver declare under the penalty of perjury this statement is true.

Crystal M. Silver

Signature

6/15/13

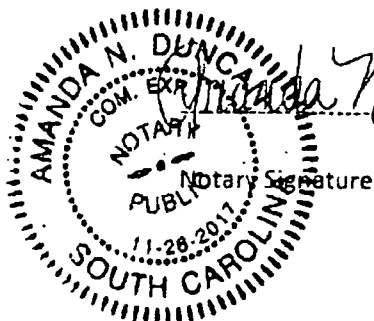
Date

Jon A. Holt

Witness

06/15/13

Date



Amanda N. Duncan

Notary Signature

06/15/13

Date

Hashawsan Brown
Team Treatment Plan Summary, cont.

GOALS AND PLAN

The following team goals have been developed to address the problem areas. The therapists responsible for working on each goal are in parentheses after each goal:

1. To increase cognitive skills necessary for independence with advanced ADL's and work re-entry (ST and Psy).
2. To increase written expression necessary for vocational and academic pursuits (ST).
3. To evaluate potential for work re-entry, driving, and academic re-entry by utilizing neuropsychological testing (Neuropsych).
4. To increase awareness of objective strengths and weaknesses with patient reporting accurate appraisal of skills level (ST and Psy).
5. To maximize utilization of memory management system through internal/external strategies for functional information to independent level (ST and Psy).
6. To facilitate the patient's and the family's adjustment and understanding of head injury (Psy, ST and Case Mgmt).

EXIT/DISCHARGE PLAN

A firm exit/discharge plan cannot be determined at this time. Based on Hashawsan's performance on the neuropsychological evaluation and response to treatment additional goals and therapies may be added.

SUMMARY

The OT evaluation has revealed no major impairments severe enough to justify continuing OT. The neuropsychological evaluation may uncover deficits which could best be addressed through OT; until the neuropsychological evaluation is completed, OT will be discontinued.

The prognosis for plan of care goals for each individual therapy and team goals is good. Treatment is recommended 2 times weekly for Speech Therapy and 1 time weekly for Psychology.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

DARVILLE E. HUDSON #227328

APPLICANT,

v.

STATE OF SOUTH CAROLINA

RESPONDENT.

IN THE COURT OF COMMON PLEAS

CIA NO: 2013-CP-23-00993

PROOF OF SERVICE

I, DARVILLE E. HUDSON (APPLICANT) CERTIFY THAT I HAVE ON THIS DAY SERVED APPLICANT'S RESPONSE TO THE RESPONDENT'S CONDITIONAL ORDER OF DISMISS UPON THE PARTIES LISTED BELOW BY PLACING THIS RESPONSE IN THE LIBEX CORR-INST MAIL BOX ON THIS DATE OF SEPT. 12, 2013.

THE FOLLOWING PARTIES HAVE BEEN SERVED AT THE BELOW ADDRESSES

1). MR. PAUL B. WICKENSIMMER
Greenville County Clerk OF
COURT
305 EAST NORTH ST.
Greenville, S.C. 29601

2). MRS. KAREN C. RATIGAN
ATT. GEN. OFF.
P.O. Box 11549
COLUMBIA S.C. 29211

S/DARVILLE HUDSON #227328

DARRELL HUDSON # 227328
LIEBER CORR INST. S.W. Can all
P.O. Box 205
Ridgely SC 29172

2

MR. PAUL B. WICKENSIMER
GREENVILLE COUNTY CLERK OF COURT
305 EAST NORTH ST.
GREENVILLE, S.C. 29601

2013-CP-23-00993

RECEIVED
FEB 08 2013
MAIL ROOM
LIEBER CL.

STATE OF SOUTH CAROLINA ~~FILED FEB 19 10 44~~ COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE ~~FILED FEB 19 10 44~~ FOR THE 13TH JUDICIAL CIRCUIT
 GREENVILLE COURT FOR GREENVILLE COUNTY.

DARNEIL E. HUDSON, 227328

APPLICANT,

CAS 2013-CP-23-00993

VS.

STATE OF SOUTH CAROLINA

RESPONDENT.

ATTACHMENT TO P.C.R. APPLICATION
 NOTICE OF A HEARING FOR
 MOTION FOR NEW TRIAL PURSUANT
 TO S.C.R.C.RIMP. RULE 29 (b) WITH
 ATTACHED AFFIDAVIT AND
 INCORPORATED MEMORANDUM
 OF LAW TO SUPPORT CLAIM.

1). I APPLICANT DARNEIL E. HUDSON* 227328, HEREBY MOVES UPON THIS COURT BY P.C.R. APPLICATION AND ATTACHED MOTION PURSUANT TO S.C.R.C.RIMP. RULE 29 (b) INCORPORATED BY MEMORANDUM OF LAW TO SUPPORT CLAIM WITH ATTACHED AFFIDAVIT BY APPLICANT TO SHOW THIS COURT A PRIMA FACIE SHOWING THAT A NEW TRIAL IS WARRANTED DUE TO NEWLY AFTER DISCOVERED EVIDENCE THAT 1). THE PROSECUTION COMMITTED A BRADY V. MARYLAND 373 U.S. 83 RULE (5) DISCLOSURE VIOLATION WHICH 2). RENDER APPLICANT'S 1995 GUILTY PLEA INVALID, VIOLATING APPLICANT'S DUE PROCESS RIGHTS UNDER THE 14TH AMENDMENT OF THE U.S. CONST. AMENDS.

2). THIS COURT OF GREENVILLE COUNTY, COURT OF COMMON PLEAS

- 3). HAVE JURISDICTION TO HEAR APPLICANT'S P.C.R. APPLICATION AND MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER-DISCOVERED EVIDENCE PURSUANT TO S.C. CODE ANN 17-27-20 (A) (4) (TIBSON V. STATE 514 SE.2d 320; THIS GIVES THIS COURT CIRCUIT JURISDICTION THE POWER TO EVALUATE THIS HEREBY P.C.R. APPLICATION/ MOTION FOR NEW TRIAL DUE TO THIS COURT OF GREENVILLE COUNTY GENERAL SESSIONS HAVING JURISDICTION OVER THE CONVICTION IMPOSED UPON APPLICANT, S.C. CODE ANN 17-27-40.
- 4). PURSUANT TO S.C. CODE ANN 17-27-45 (B) APPLICANT HEREBY FILES THIS P.C.R. APPLICATION/ MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER-DISCOVERED EVIDENCE WITHIN THE (1) YEAR FILING PERIOD OF THIS NEWLY AFTER-DISCOVERED EVIDENCE BEING DISCOVERED.
- 5). APPLICANT AND APPLICANT'S ATTORNEY WAS EXCUSABLY IGNORANT TO THE EXISTANCE OF THIS DISCOVERED EVIDENCE DUE TO THE PROSECUTION FAILING TO DISCLOSE FAVORABLE EVIDENCE TO THE DEFENSE, STATE V. PROCTOR 559 SE 2d 318; THEREFORE APPLICANT COULD NOT PURSUE P.C.R. PURSUANT TO S.C. CODE ANN 17-27-45(A) PELIGUIN V. STATE 469 SE. 2d 606.
- 6). APPLICANT ATTACHES PERSONAL AFFIDAVIT TO SUPPORT CLAIM PRESENTED IN MOTION FOR NEW TRIAL PURSUANT

TO S.C.R. CRIMP. RULE 29(B) TO SUPPORT P.C.R. APPLICATION AND MOTION FOR NEW TRIAL.

7). APPLICANT WITHIN THIS VERIFIED P.C.R. APPLICATION / MOTION FOR NEW TRIAL PURSUANT TO S.C.R. CRIMP. RULE 29(B) STATES THE FACTS KNOWN TO HIM AND THE SAID ALLEGATIONS RAISED ARE TRUE AND MUST BE CONSIDERED TRUE BY THIS COURT. LEAMON V. STATE 611 SE 2d 494 (2005) AND BY THE PREPONDERANCE OF THE NEWLY AFTER- DISCOVERED EVIDENCE APPLICANT WILL SHOW THIS COURT THAT THE PROSECUTION VIOLATED APPLICANT'S DUE PROCESS RIGHTS UNDER THE 14TH AMENDMENT OF THE U.S. CONST. AMENDS BY SUPPRESSING FAVORABLE EVIDENCE TO THE DEFENSE, BRADY, SUPRA AT PAGE 88, AND THAT IF A NEW TRIAL WAS GRANTED BY THIS COURT IT WILL CHANGE THE RESULT IN THE CONVICTION IMPOSED, GIBSON V. STATE 334 S.C. 515. STATE V. TROTTER 322 S.C. 537.

8). APPLICANT BY THIS HEREBY MOTION FOR NEW TRIAL PURSUANT TO S.C.R. CRIMP. RULE 29(B) REQUEST A EVIDENTIARY HEARING ON THE RECORD TO HEAR TESTIMONY OF THE PARTIES TO DEVELOP ANY FURTHER FACTS KNOWN TO SUBSTANTIATE CLAIM FOR RELIEF. APPLICANT ALLEGES A EVIDENTIARY HEARING IS THE APPROPRIATE VENUE BY THIS COURT TO VIEW THOSE FACTS PRESENTED BY APPLICANT IN HIS P.C.R. APPLICATION / MOTION FOR NEW

TRIAL, STATE V. PROCTOR 359 SL 2d 318;

- 9). APPLICANT WAS SENTENCE IN THIS COURT OF GREENVILLE COUNTY GENERAL SESSION IN THE YEAR OF OCTOBER 26, 1995 TO A Y.O.A. 1-6 YEAR SENTENCE FOR (1) COUNT OF ARMED ROBBERY AND (5) YEARS PROBATION FOR (1) COUNT OF ASSAULT AND BATTERY WITH A HIGH AGGRAVATED NATURE By CIRCUIT COURT JUDGE M. WESTBROOK AFTER A PLEA OF GUILTY.
- 10). APPLICANT WAS REPRESENTED BY ATTORNEY HAI W. ROACH By THE PUBLIC DEFENDER'S OFFICE FOR GREENVILLE County.
- 11). MR. BOB ARIAIL WAS THE PROSECUTOR FOR THE GREENVILLE County SOLICITOR'S OFFICE IN THE YEAR OF 1995.
- 12). ISSUE PRESENTED
 - 1). NEWLY AFTER-DISCOVERED EVIDENCE THAT THE PROSECUTION COMMITTED A BRADY V. MARYLAND 373 U.S. 83, RULE (5) DISCLOSURE VIOLATION RENDERING
 - 2). APPLICANT'S GUILTY PLEA INVOLUTARY, VIOLATING APPLICANT'S DUE PROCESS RIGHTS UNDER THE 14TH.

AMENDMENT OF THE U.S. CONST. AMENDS. GUSTINE V. STATE 325 S.C. 123; MILL V. LOCKHART 474 U.S. 52; AND SANCHEZ V. U.S. 50 F.3RD 1448.

THE PROCEDURAL HISTORY

AND STATEMENT OF FACTS

13). ON THE SAID DATE OF MARCH 13, 1995 A ALLEDGE VICTIM HASHAWSAN K. BROWN REPORTED TO THE GREENVILLE CITY POLICE DEPT "OFC. JT BURGESS" THAT HE WAS ROBED AT GUN POINT AND ASSAULTED BY GETING HIT IN HIS HEAD WITH A GUN BY TWO UNKNOWN BACK INDIVIDUALS. HE "THE VICTIM" GAVE THE GREENVILLE CITY POLICE DEPT A DESCRIPTION OF THE TWO INDIVIDUALS THAT HE ALLEDGED ARMED ROBED HIM AND ASSAULTED HIM. THE VICTIM GAVE A SWORN STATEMENT TO THE GREENVILLE CITY POLICE DEPT AND WAS SHOWN A PHOTO LINE-UP AND IDENTIFIED THE SAID APPLICANT DARNEIL E. HUDSON AS ONE OF THE ARMED ROBBERS AND THE ONE WHO ASSAULTED HIM. THE VICTIM NEVER KNOWN OF APPLICANT PRIOR TO HIS STATEMENT AND IDENTIFICATION OF APPLICANT. OFC. JT BURGESS WAS THE OFC. INVOLVED IN THE INVESTIGATION OF THE CASE. ON OR ABOUT MARCH 13-14 1995 THE GREENVILLE CITY POLICE DEPT OBTAINED A SEARCH WARRANT

FOR [REDACTED] [REDACTED] WHICH BELONGED TO APPLICANT'S CHILD MOTHER IN GREENVILLE COUNTY AND ON THAT NIGHT BY EXECUTING THE SEARCH WARRANT THE GREENVILLE CITY POLICE DEPT APPREHENDED APPLICANT AND ARRESTED AND CHARGED HIM WITH (1) COUNTY OF ARMED ROBBERY AND (1) COUNT OF ASSAULT AND BATTERY WITH THE INTENT TO KILL. UPON THE SEARCH OF THE APT. THE GREENVILLE CITY POLICE DEPT FOUNDED NO EVIDENCE TO LINK APPLICANT AS THE ALLEGED ARMED ROBBER AND ASSAULTER. APPLICANT WAS APPOINTED COUNSEL, MR. HAI W. ROACH FROM THE GREENVILLE COUNTY PUBLIC DEFENDERS OFFICE ON THE DATE OF OCTOBER 16, 1995 TO REPRESENT APPLICANT ON ALL CHARGES. SHORTLY AFTER ATTORNEY HAI ROACH WAS APPOINTED TO REPRESENT APPLICANT HE CAME TO THE DETENTION CENTER TO CONSULT WITH APPLICANT. APPLICANT WAS TOLD BY ATTORNEY HAI ROACH THAT IF HE WAS TO GO TO TRIAL ON THE CHARGES (IF) FOUNDED GUILTY HE COULD BE SENTENCE TO (30) YEARS ON THE ARMED ROBBERY CHARGE AND SENTENCE TO (25) YEARS ON THE ASSAULT AND BATTERY WITH A INTENT TO KILL. APPLICANT TOLD ATTORNEY HAI ROACH SEVERAL TIMES THAT HE WAS INNOCENCE OF THE CHARGES. ATTORNEY HAI ROACH TOLD APPLICANT THAT THE VICTIM HAD WROTE A STATEMENT AND PICKED APPLICANT OUT OF A PHOTO-LINE UP AND THAT EVIDENCE ALONE COULD CONVICT HIM BY A JURY. ATTORNEY HAI ROACH TOLD APPLICANT THAT BEING THAT APPLICANT WAS

17 YEARS OLD AT THE TIME OF THE INCIDENT HE COULD GET APPLICANT A Y.O.A. SENTENCE AND PROBATION FOR THE CHARGES IF HE WAS TO PLEA GUILTY SO HE COULD GET BACK TO HIS NEW BORN CHILD AND FAMILY SOONER. APPLICANT THOUGHT ABOUT THE (30) YEAR SENTENCE PLUS THE (25) YEAR SENTENCE AND SPENDING ALL THAT TIME IN PRISON AND THAT THE STATEMENT FROM THE VICTIM AND THE PHOTO LINE-UP COULD HAVE HIM FOUNDED GUILTY BY A JURY IF HE WENT TO TRIAL SO APPLICANT TOLD ATTORNEY HAI ROACH THAT HE WOULD PLEA GUILTY FOR THE Y.O.A. 1-6 AND PROBATION. ABOUT (10) DAYS AFTER ATTORNEY HAI ROACH WAS APPOINTED TO REPRESENT APPLICANT OF ALL THE CHARGES HE TOOK APPLICANT IN FRONT OF JUDGE M. WESTBROOK AT A GUILTY PLEA HEARING. AT THE PLEA HEARING JUDGE WESTBROOK QUESTION APPLICANT ON THE RECORD HOW DO YOU PLEA AND APPLICANT STATED TO THE JUDGE, YOUR HONOR I DID NOT COMMIT THE CHARGES AGAINST ME. THE JUDGE THEN TOLD APPLICANT THAT IF YOU WAS TO GO TO TRIAL FOR THESE CHARGES HE COULD SENTENCE APPLICANT TO (30) YEARS FOR THE ARMED ROBBERY AND (25) YEARS FOR THE ASSAULT AND BATTERY WITH THE INTENT TO KILL. SO THE APPLICANT TOLD THE JUDGE THAT HE WOULD PLEA JUST TO GET IT OVER WITH SO HE COULD GET BACK TO HIS CHILD AND LOVES ONES SOON SO ON THE DATE OF OCTOBER 26, 1995 JUDGE WESTBROOK ACCEPTED APPLICANT'S PLEA AND HAD APPLICANT SIGN THE WAIVER AND SENTENCE SHEET AFTER

HE SENTENCED APPLICANT TO A Y.O.A. (1-6) YEAR SENTENCE FOR THE ARMED ROBBERY CHARGE AND (5) YEARS PROBATION FOR ASSAULT AND BATTERY WITH A HIGH AGGRAVATED NATURE. AT NO TIME PRIOR TO THE GUILTY PLEA HEARING DID THE PROSECUTION (PROSECUTOR BOB ARIAIL OR OFC. JT BURGESS) DISCLOSE TO THE DEFENSE IN THE RULE (5) BRADY MOTION THAT THE VICTIM HAS A MENTAL DISABILITY AND THAT THE VICTIM HAD SUFFERED FROM BRAIN DAMAGE AFFECTS THAT AFFECTS HIS MEMORY WHICH WAS CAUSED BY THE VICTIM SHOOTING HIMSELF IN THE HEAD IN A ATTEMPT TO COMMIT SUICIDE IN WHICH THEY "THE PROSECUTION" KNEW OF DUE TO THEIR INVESTIGATION OF THE INCIDENT AND THE VICTIM'S BACKGROUND HISTORY. ON THE DATE OF 1-23-2013 APPLICANT DISCOVERED THIS EVIDENCE ABOUT THE VICTIM SHOOTING HIMSELF IN HIS HEAD PRIOR TO THE ALLEGED ARMED ROBBERY AND ASSAULT AND THAT THE VICTIM SUFFERED FROM A BRAIN DAMAGE AFFECT THAT AFFECTED HIS MEMORY AND THAT THE VICTIM HAS A MENTAL DISABILITY. APPLICANT DISCOVERED THIS INFORMATION BY TALKING TO THE VICTIM CLOSE FRIEND JERMAN BARTON WHICH IS FROM GREENVILLE S.C., APPLICANT NEVER SEEN THE VICTIM NOR KNEW ANYTHING ABOUT THIS ALLEGED VICTIM PRIOR TO THIS NEWLY AFTER-DISCOVERED EVIDENCE BEING DISCOVERED. THIS APPLICATION/MOTION FOLLOWS.

THE P.C.R. APPLICATION ATTACHMENT TO SUPPORT
MOTION

14). APPLICANT NOW MOVES UPON THIS COURT BY P.C.R. APPLICATION AND MOTION AND STATE EACH AND EVERY ALLEGATION SET FORTH IN THE ATTACHMENT OF THIS MOTION IS INCORPORATE HEREIN AND MADE A PART OF THE RECORD TO SUPPORT CLAIMS PRESENTED IN THE P.C.R. APPLICATION AND MOTION FOR NEW TRIAL. APPLICANT HEREBY SHOW THIS COURT A PRIMA FACIE SHOWING THAT A NEW TRIAL IS WARRANTED DUE TO NEWLY AFTER-DISCOVERED EVIDENCE BY DEMONSTRATING THE PROSECUTION COMMITTED A RULE(5) BRADY VIOLATION RENDERING APPLICANT'S GUILTY PLEA INVALID, VIOLATING APPLICANT'S DUE PROCESS RIGHTS UNDER THE 14TH AMENDMENT OF THE U.S. CONST AMENDS.

ISSUE 1

BRADY VIOLATION

EVIDENCE WAS FAVORABLE TO THE ACCUSED.

15). APPLICANT ALLEGES THAT 1). THE MENTAL HEALTH RECORDS OF THE ALLEGED VICTIM (WHICH WOULD OF REVEALED) THE VICTIM SUFFERING FROM A MENTAL DISABILITY WAS RELEVANT AND MATERIAL TO APPLICANT'S DEFENSE BECAUSE IT WOULD OF DESCRIBED THE VICTIM'S PARTICULAR ILLNESS AND DISABILITY AND WOULD OF PROVEN THE VICTIM TRAIN OF THOUGHTS ARE ILLRATIONAL AND SUBJECTED TO INCOMPETENT,

THE MENTAL HEALTH RECORDS INCLUDES ANY AND ALL (REPORTS, EXAMINATIONS AND TEST) DESCRIBING THE ILLNESS AND DISABILITY OF THE ALLEGED VICTIM PURSUANT TO RULE (5)(A)(1)(D) OF S.C.R.C.R.I.M.P. 2). THE HOSPITAL MEDICAL RECORDS OF THE VICTIM (WHICH WOULD OF REVEALED) THE TYPE OF DAMAGE CAUSED BY THE BULLET TO THE PARTICULAR PART OF THE VICTIM BRAIN WAS RELEVANT AND MATERIAL TO APPLICANT'S DEFENSE BECAUSE IT WOULD OF PROVEN THE VICTIM SUFFERED FROM A GUN SHOT WOUND TO HIS HEAD WHICH AFFECTED THE VICTIM MEMORY WHICH IS SUBJECTED TO INCOMPETENT. THE HOSPITAL RECORDS INCLUDES ANY AND ALL (REPORTS, EXAMINATIONS AND TEST) DESCRIBING THE DAMAGE OF THE VICTIM BRAIN AND DISABILITY AFFECTS, PURSUANT TO RULE (5)(A)(1)(D) OF S.C.R.C.R.I.M.P. AND 3). THE POLICE INVESTIGATION RECORDS (WHICH WOULD OF REVEALED) THE DATE, TIME, AND DESCRIPTION OF GUN USED BY THE VICTIM IN WHICH THE VICTIM SHOT HIS SELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE, PRIOR TO THE ALLEGED INCIDENT WHICH THE VICTIM ALLEGES APPLICANT ARMED ROB HIM AND ASSAULTED HIM WAS RELEVANT AND MATERIAL TO APPLICANT'S DEFENSE BECAUSE IT WOULD OF PROVEN THE VICTIM'S CHARACTER AND REPUTATION TO ACT IRRATIONAL AND SUICIDAL

AND THAT THE VICTIM DID CAUSE INJURY TO HIMSELF WAS EVIDENCE SUBJECTED TO INCOMPETENT. APPLICANT ALLEGES THAT THE (3) FACTORS OF EVIDENCE COULD OF BEEN FAVORABLE TO THE DEFENSE FOR REASON

1). CHALLENGING THE VICTIM'S COMPETENCY TO STAND TRIAL AND TESTIFY AGAINST APPLICANT.

16). IF THE VICTIM'S MENTAL DISABILITY AND BRAIN DAMAGE AFFECTS WAS CHALLENGED BY THE DEFENSE IN A COMPETENCY HEARING (WHICH IS QUESTIONABLE) IT WAS THE DUTY OF THAT TRIAL COURT TO EVALUATE THE ALLEGED VICTIM'S CONDUCT, PRESENT ABILITY TO THINK AND ACT RATIONAL WITH A LEVEL OF UNDERSTANDING TO FACTUAL QUESTIONING ABOUT TRUTH WHICH QUESTIONS WOULD OF BEEN IMPOSED BY THE DEFENSE, PROSECUTION OR COURT, AND ALSO TO DETERMINE THE VICTIM'S MENTAL ABILITY TO AFFER HIS TESTIMONIAL EVIDENCE SURROUNDING THE CIRCUMSTANCE OF THE ALLEGED INCIDENT BY HIS VERSION OF EVENTS CONCERNING THE ARMED ROBBERY AND ASSAULT WHICH THE VICTIM ALLEGINGLY ACCUSED APPLICANT OF COMMITTING THESE OFFENSE AGAINST HIM. IN PENNSYLVANIA V. GOLDBLUM 498 P.2D 455, 447 A.2D 234, THAT COURT HELD. IN ORDER TO BE COMPETENT TO TESTIFY, A WITNESS MUST HAVE

THE ABILITY TO 1). PERCEIVE THE EVENT WITH A SUBSTANTIAL DEGREE OF ACCURACY 2). REMEMBER IT, 3). COMMUNICATE ABOUT IT INTELLIGENTLY AND 4). BE MINDFUL OF THE DUTY TO TELL THE TRUTH UNDER OATH. SO HAD THE DEFENSE WOULD OF CHALLENGED THE VICTIM'S COMPETENCY TO STAND TRIAL IT WAS THE DUTY OF THE TRIAL COURT TO DETERMINE WAS THE VICTIM COMPETENT TO STAND TRIAL, STATE V. CAMELE, 293 S.C. 302; 360 SE 2d. 307 (1987) STATE V. PITTS 256 SC. 420; 183 SE 2d. 738 (1971) IN RE ROBERT M; 294 S.C. 69, 362 SE 2d 639 (1987) THUS IF THAT COURT WOULD OF FOUNDED THE VICTIM INCAPABLE OF UNDERSTANDING THE DUTY OF A WITNESS TO TELL THE TRUTH OR TO ACT RATIONAL UNDER OATH, THE TRIAL COURT WOULD OF HAD TO DISQUALIFIED THE VICTIM PURSUANT TO S.C.R. EVID. RULE 601(B) DISQUALIFICATION OF A WITNESS; STATE V. GREEN 267 S.C. 599, THE VICTIM'S TESTIMONY IDENTIFYING APPLICANT AS THE ALIEDGE ARMED ROBBER AND ASSAULTER WAS THE ESSENCE OF THE STATES CASE, HE WAS ESSENTIAL TO IT'S INVESTIGATION AND INDEED MADE THE CASE AGAINST APPLICANT. SO IF HEID INCOMPETENT BY THE COURT APPLICANT FACED ACQUITTAL OF THE ALIEDGE CHARGES, THAT MENTAL HEALTH RECORD WAS FAVORABLE BECAUSE IT WAS MATERIAL EVIDENCE THAT IF WAS DISCLOSED TO THE DEFENSE "CASE" "BY THE PROSECUTION" IT WAS A

REASONABLE PROBABILITY THE MENTAL HEALTH RECORDS
 COULD OF UNDERMINED THE OUTCOME IN TRIAL, KYLES V.
 WHITLEY 514 U.S. 419, STATE V. CAIN 377 SE 2d 556,
 WHICH STATE, A REASONABLE PROBABILITY IS A PROBABILITY
 TO UNDERMINE CONFIDENCE IN THE OUTCOME OF THE
 PROCEEDING. APPLICANT ALSO ALLEGES THAT 2). DUE TO
 THE VICTIM'S BRAIN DAMAGE AFFECTS THAT AFFECTED
 HIS MEMORY WOULD OF ALSO BEEN ONE OF THE QUESTION
 THE TRIAL COURT WOULD OF HAD TO DETERMINE IN
 THE COMPETENCY HEARING, IN SHERLEY V. SEABOLD
 929 F 2d 272, THAT COURT HELD THE WITNESS
 IDENTIFICATION UNRELIABLE BECAUSE VICTIM SUFFERED
 FROM MEMORY LOSS, THE HOSPITAL RECORDS WAS ALSO
 FAVORABLE TO THE DEFENSE BECAUSE IT WAS MATERIAL
 EVIDENCE THAT IF WAS DISCLOSED TO THE DEFENSE,
 "BY THE PROSECUTION" IT WOULD OF UNDERMINED CONFIDENCE
 IN THE OUTCOME OF THE PROCEEDING. NEIL V.
 BIGGER 409 U.S. 188, STOVALL V. DENNO 388 U.S. 293.
 UNRELIABLE IDENTIFICATION SUPPRESSED BY THE
 COURT. ONCE AGAIN IT WAS THE DETERMINATION OF
 THE COURT TO ALLOW THE WITNESS TO TESTIFY UNDER
 S.C.R. EVID. RULE 601(A) STATE V. SMITH 199 S.C. 279.
 APPLICANT ALSO ALLEGES THAT 3). THE POLICE
 INVESTIGATION REPORTS OF THE ALLEGED VICTIM
 ATTEMPT TO COMMIT SUICIDE WAS ALSO FAVORABLE
 BECAUSE IT WAS MATERIAL EVIDENCE THAT IF WAS

DISCLOSED TO THE DEFENSE" BY THE PROSECUTION"
 IT HAD A REASONABLE PROBABILITY TO UNDERMINE
 CONFIDENCE IN THAT PROCEEDING BECAUSE IT WAS
 EVIDENCE TO SUPPORT THE DEFENSE AT THE COMPETENCY
 HEARING TO SHOW THE VICTIM IRRATIONAL TRIAN OF
 THOUGHTS TO STAND TRIAL AGAINST APPLICANT. APPLICANT
 ALLEGES THAT IF THE COURT WOULD OF FOUNDED THE VICTIM
 COMPETENT TO STAND TRIAL THE (3) FACTOR'S OF EVIDENCE
 WAS STILL FAVORABLE TO THE DEFENSE DUE TO IMPEACHMENT
 PURPOSES. PURSUANT TO S.C.R. EVID. RULE 405 (B) THUS
 PURSUANT TO THE 6TH AMENDMENT OF THE U.S. CONST AMENDS
 THE APPLICANT HAD THE RIGHT TO CONFRONTATION AND
 CROSS EXAMINATION, POINTER V. TEXAS 380 U.S. 400;
 AND BY THE PRESECUTION FAILING TO DISCLOSE THAT
 FAVORABLE EVIDENCE WHICH WAS 1). THE MENTAL HEALTH
 RECORDS, 2). THE HOSPITAL RECORDS, AND 3). THE POLICE
 INVESTIGATION REPORTS OF THE ALLEDGE VICTIM SHOOTING HIMSELF
 IN HIS HEAD IN A ATTEMP TO COMMIT SUICIDE PREJUDICED
 APPLICANT DUE TO 1). THE PROSECUTION DENYING APPLICANT
 TO EFFECTIVE ASSISTANCE OF TRIAL COUNSEL TO CHALLENGE
 THE VICTIM'S COMPETENCY TO STAND TRIAL AND TESTIFY AGAINST
 APPLICANT, 2). THE PROSECUTION DENIED APPLICANT TO
 CHARACTER EVIDENCE THAT FAILS UNDER S.C.R. EVIDENCE
 PURSUANT TO RULE 405 (B) INWHICH THE VICTIM ATTEMP
 TO COMMIT SUICIDE WAS SUBJECTED TO IMPEACHMENT TO SHOW
 HIS CHARACTER AND REPRETATION WAS NOT STABLE OR

COMPETENT; 3). THE PROSECUTION DENIED APPLICANT THE RIGHT TO CONFRONTATION UNDER THE U.S. CONST, 6TH AMENDS, "BY FAILING TO DISCLOSE" FAVORABLE EVIDENCE, DAVIS V. ALASKA 415 U.S. 308; 4). THE PROSECUTION DENIED APPLICANT TO FAVORABLE EVIDENCE WHICH COULD OF BEEN USED IN CHALLENGING THE VICTIM'S IDENTIFICATION OF APPLICANT, NEIL V. BIGGER 409 U.S. 188, STOVALL V. DENNO 388 U.S. 293, AND SHERLEY V. SEABOARD 929 F 2d 272. 5) THE PROSECUTION DENIED APPLICANT TO THE RIGHT TO A FAIR TRIAL BY FAILING TO DISCLOSE FAVORABLE EVIDENCE, VIOLATION OF THE 14TH AMENDMENT UNDER THE U.S. CONST AMENDS. BRADY V. MARYLAND 373 U.S. 83, GIBSON V. STATE 334 S.C. 515; STATE V. PROCTOR 559 SE 2d 318; APPLICANT ALLEGES THAT HAD THE FAVORABLE EVIDENCE BEEN DISCLOSED TO THE DEFENSE ITS A REASONABLE PROBABILITY THE OUTCOME IN THE PROCEEDING WOULD OF BEEN DIFFERENT, DAVIS V. ALASKA 415 U.S. 308, KYLES V. WHITNEY 514 U.S. 419. APPLICANT ALLEGES THAT HAD THE EVIDENCE WOULD OF BEEN DISCLOSED TO THE DEFENSE HE WOULD OF NEVER PLEAD GUILTY TO THE CHARGES AND WOULD OF INSISTED TO STAND TRIAL, GIBSON V. STATE 334 S.C. 515; HILL V. LOCKHART 474 U.S. 52;

2). THE EVIDENCE WAS IN THE POSSESSION OF OR KNOWN TO THE PROSECUTION.

17). APPLICANT ALLEGES THAT THE PROSECUTION HAD THIS FAVORABLE EVIDENCE OF THE VICTIM SHOOTING HIS SELF IN HIS HEAD IN A ATTEMP TO COMMIT SUICIDE DUE TO THE POLICE REPORTS AND THIER INVESTIGATION OF THAT INCIDENT THAT TOOK PLACE AND BY THEIR EXERCISE OF DUE DILIGENCE IN THIS INVESTIGATION IN WHICH THE VICTIM ALLEGINGLY CLAIM HE WAS ARMED ROBBED AND ASSAULTED OPENED THE DOOR TO THE VICTIM'S BACK GROUND HISTORY AND DUE TO THAT EVIDENCE OF THE VICTIM'S BACK GROUND HISTORY THE INVESTIGATOR (JT BURGESS) KNEW OF THE SHOOTING INCIDENT AND SHOUD OF TURNED THAT INFORMATION OVER TO THE PROSECUTOR SO THE PROSECUTOR COULD OF DID HIS INVESTIGATION BY THE EXERCISE OF DUE DILIGENCE TO PREPARE FOR DISCLOSURE PURSUANT TO S.C.R. EVID. RULE (S). THE PROSECUTOR, WHO WAS ASSIGNED TO THE CASE WAS RESPONSIBIE TO MAKE DISCLOSURE OF THAT SUCH EVIDENCE WHEN ITS A REASONABLE PROBABILITY THAT EVIDENCE DISCOVERED BY THE PROSCUTION "INVESTIGATION PARTY" IS SUBJECTED TO UNDERMINE CONFIDENCE IN THE OUTCOME OF TRIAL, MOREOVER, THAT RESPONSIBILITY REMAINS REGARDLESS OF ANY FAILURE BY THE POLICE TO BRING FAVORABLE EVIDENCE TO THE PROSECUTOR'S ATTENTION. BECAUSE IT IS THE PROSECUTOR'S DUTY TO LEARN OF ANY FAVORABLE EVIDENCE KNOWN TO THE OTHER'S WHILE ACTING ON THE GOVERNMENT'S BEHAIF INCLUDING THE POLICE. IN UNITED STATES V. AGURS 427 U.S. 97 THAT COURT

HEID THAT THE PROSECUTOR HAS A OBLIGATION TO DISCLOSE FAVORABLE EVIDENCE TO THE DEFENSE EVEN IF NOT REQUESTED BY THE DEFENSE WHERE THERE IS EVIDENCE SUBJECTED TO A REASONABLE PROBABILITY THAT SUCH EVIDENCE WOULD PRODUCE A DIFFERENT RESULT IN THE OUTCOME OF A PROCEEDING, SO THE PROSECUTION HAD THAT EVIDENCE IN THEIR POSSESSION, GIBSON V. STATE 334 S.C. 515, STATE V. VON DOHLEN 322 S.C. 240, THE POLICE INVESTIGATION REPORTS OF THE ALLEDGE VICTIM SHOOTING HIS SELF IN THE HEAD IN THE A ATTEMP TO COMMIT SUICIDE, THE MENTAL HEALTH RECORDS AND ALSO THE HOSPITAL RECORDS WHICH DESCRIBED IN EVIDENCE FAVORABLE TO THE APPLICANT SHOULD OF BEEN DISCLOSED TO THE DEFENSE. BRADY. SUPRA. THE PROSECUTOR AND THE OFC. JT BURGESS WAS PRESENT AT APPLICANT'S GUILTY PLEA HEARING SO THEY SHOULD OF DISCLOSED THAT EVIDENCE TO THE DEFENSE THEN AND THERE PRIOR TO APPLICANT PLEADING GUILTY TO CHARGES.

3). THE EVIDENCE WAS SUPPRESSED BY THE PROSECUTION

18). APPLICANT ALLEDGE THAT THE PROSECUTION SUPPRESSED THE FAVORABLE EVIDENCE WHEN IT FAILED TO DISCLOSE THE EVIDENCE TO THE DEFENSE IN THE BRADY RULE (5) DISCLOSURE. THE PROSECUTION HAD THIS FAVORABLE EVIDENCE IN ITS POSSESSION AND WITHHELD IT AND BY DOING SO THE FAILURE TO DISCLOSE PREJUDICED

APPLICANT BECAUSE THE PROSECUTION WITHHELD EVIDENCE
 THAT IF DISCLOSED TO THE DEFENSE IT HAD A
 REASONABLE PROBABILITY TO UNDERMINE CONFIDENCE
 IN THE PROCEEDING. KYLES V. WHITLEY 514 U.S. 433
 STATE V. VONDOHLEN 322 S.C. 240 IT WAS THE PROSECUTOR'S
 DUTY TO DISCLOSE PURSUANT TO S.C. RULES OF PRO. CONDUCT,
 RULE (3.4) FAIRNESS TO OPPOSING PARTY AND COUNSEL
 (A) A LAWYER SHALL NOT, "IN PART"; CONCEAL A
 DOCUMENT OR OTHER MATERIAL HAVING POTENTIAL
 EVIDENCE VALUE, AND (D) IN PRETRIAL PROCEDURES,
 "IN PART" FAIL TO MAKE A REASONABLE DILIGENT EFFORT
 TO COMPLY WITH A LEGALLY PROPER DISCOVERY REQUEST
 BY OPPOSING PARTY. THUS THE PROSECUTOR VIOLATED
 S.C.R. PRO. CONDUCT RULE (3.4.) BY FAILING TO DISCLOSE 1),
 THE MENTAL HEALTH RECORDS REVEALING TO THE DEFENSE
 THE VICTIM SUFFERED FROM A MENTAL DISABILITY, 2),
 THE HOSPITAL RECORDS REVEALING THE VICTIM SUFFERED FROM
 A GUN SHOT WOUND TO HIS BRAIN THAT AFFECTED THE VICTIM'S
 MEMORY AND 3). THE POLICE INVESTIGATION REPORTS
 CONCERNING THE INCIDENT WITH THE VICTIM SHOOTING HIM
 SELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE. THAT
 EVIDENCE WAS INDEED MATERIAL TO THE DEFENSE AND DUE
 TO RULE (5) OF S.C.R. EVID. APPLICANT WAS ENTITLED TO IT.
 GIBSON V. STATE 334 S.C. 515, U.S. V. BAGLEY 473 U.S. 667
 EVEN IF NOT REQUESTED BY THE DEFENSE, AGURS, 427
 U.S. 97, WHEN A PROSECUTOR KNOWS OF FAVORABLE EVIDENCE

WHICH CAN CHANGE THE OUTCOME OF THE PROCEEDING ITS
HIS DUTY TO DISCLOSE, AND THAT EVIDENCE THE PROSECUTOR
SUPPRESSED DID HAVE A REASONABLE PROBABILITY TO UNDERMINE
CONFIDENCE IN THAT PROCEEDING. BECAUSE 1). THE EVIDENCE
WAS MATERIAL TO APPLICANT'S GUILT, AND OR COULD OF BEEN
USED IN IMPEACHMENT OR EXCULPATORY CIRCUMSTANCE.
"SEE EVIDENCE WAS FAVORABLE TO THE DEFENSE",

4). THE EVIDENCE WAS MATERIAL TO APPLICANT'S GUILT AND IT
APPLIED UNDER IMPEACHMENT EVIDENCE

19). APPLICANT ALLEGED THAT THE ESSENCE OF THE STATE CASE
WAS THE VICTIM CLAIMING HE WAS ARMED ROBBED AND
ASSAULTED BY APPLICANT, AND BY THE VICTIM WRITING
A STATEMENT AND PICKING APPLICANT OUT OF A PHOTO
LINE-UP, THAT EVIDENCE WAS POINTED TO APPLICANT'S GUILT,
APPLICANT ALLEGED THAT THE FAVORABLE EVIDENCE
SUPPRESSED BY THE PROSECUTION COULD OF BEEN USEFUL
TO THE DEFENSE TO CHALLENGE THE VICTIM VERSION OF
EVENTS AND COMPETENCE TO STAND TRIAL AGAINST
APPLICANT. APPLICANT ALSO ALLEGES THAT THE EVIDENCE
SUPPRESSED BY THE PROSECUTION COULD OF BEEN USEFUL
IN IMPEACHMENT PURPOSES UNDER S.C.R. EVID. RULE 405 (B)
"SEE FAVORABLE EVIDENCE TO THE DEFENSE", THUS, THE VICTIM'S
VERSION OF EVENTS IS QUESTIONABLE DUE TO HIS MENTAL
DISABILITY (WHICH WAS NOT DISCLOSED) AND HIS BRAIN DAMAGE

AFFECTS THAT AFFECTED HIS MEMORY DUE TO THE VICTIM SHOOTING HIMSELF IN HIS HEAD IN A ATTEMP. TO COMMIT SUICIDE (WHICH ALSO WAS NOT DISCLOSED). TO THE DEFENSE. GIBSON V. STATE 334 S.C. 515,

INVOLUNTARY GUILTY PLEA.

- 20). APPLICANT ATTACK HIS 1995 GUILTY PLEA AS INVOLUNTARY AND NOT KNOWINGLY AND INTELLIGENTLY ENTER DUE TO THE PROSECUTION FAILING TO DISCLOSE THE FAVORABLE EVIDENCE TO THE DEFENSE. GIBSON V. STATE 334 S.C. 515, SANCHEZ V. U.S. 50 F. 3D. 1448 AND GUSTINE V. STATE 325 S.C. 123; WAIVERS OF CONSTITUTIONAL RIGHTS NOT ONLY MUST BE VOLUNTARY BUT MUST ALSO BE KNOWING AND INTELLIGENT ACTS DONE WITH SUFFICIENT AWARENESS OF THE RELEVANT CIRCUMSTANCES AND LIKELY CONSEQUENCES. IN SANCHEZ WHEN A DEFENDANT LACKS KNOWLEDGE OF MATERIAL EVIDENCE IN THE PROSECUTION'S POSSESSION THE WAIVER OF CONSTITUTIONAL RIGHTS CAN NOT BE DEEM KNOWINGLY AND VOLUNTARY. WHITE V. U.S. 858 F.2D. 416; MILLER V. ANGLIKER 848 F.2D. 1312; APPLICANT ALLEDGE THAT HAD THE PROSECUTION WOULD OF DISCLOSED THE FAVORABLE EVIDENCE TO THE DEFENSE OF THE VICTIM'S MENTAL DISABILITY AND SHOOTING HIMSELF IN HIS HEAD AND SUFFERING FROM A BRAIN DAMAGE AFFECTS THAT AFFECTED THE VICTIM'S MEMORY APPLICANT WOULD NOT HAD PLEAD GUILTY TO THE CHARGES BUT INSISTED TO STAND TRIAL. HILL V. LOCKHART 474 U.S. 52.

APPLICANT ALLEGES THAT THE EVIDENCE SUPPRESSED BY THE PROSECUTION HAD A REASONABLE PROBABILITY TO UNDERMINE CONFIDENCE IN THE STATES CASE AND BY THE PROSECUTION FAILING TO DISCLOSE THE EVIDENCE TO THE DEFENSE, APPLICANT WAS PREJUDICED, VIOLATING APPLICANT'S 14TH AMENDMENT OF THE U.S. CONST AMENDS.

THE RELIEF REQUESTED

- 21). APPLICANT ASK THIS COURT TO GRANT APPLICANT 1). A EVIDENTIARY HEARING TO HEAR FURTHER TESTIMONY AND EVIDENCE CONCERNING THE ALLEGATION RAISED AND 2). GRANT APPLICANT A NEW TRIAL IN THIS MOTION.

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 7th
DAY OF February 2013

Sylvia Jones
NOTARY

EXP: 1/24/2018

Darnell Hudson

SIGNATURE OF APPLICANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2013-CP-23-0993
COUNTY OF GREENVILLE	)	
	)	
Darnell East Hudson,	)	
S.C.D.C. No. 227328,	)	
	)	
Applicant,	)	
	)	RETURN AND MOTION TO DISMISS
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief filed February 19, 2013, would respectfully show this Court:

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant waived presentment to the Greenville County Grand Jury for armed robbery (1995-GS-23-6102) and assault and battery with intent to kill (1995-GS-23-6103). He was represented by Hal W. Roach, Esquire.

On October 26, 1995, the Applicant pled guilty to armed robbery and assault and battery of a high and aggravated nature (ABHAN). He was sentenced by the Honorable Marc Westbrook under the Youthful Offender Act to concurrent terms not to exceed six years for armed robbery and not to exceed six years suspended to five years probation for ABHAN. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions and the Applicant's records from the

South Carolina Department of Corrections.

II.

In the application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Newly-after-discovered evid."
2. "Prosecution failed to disclose favorable evid."
 - a. Brady Violation.
3. "Involuntary guilty plea."

III.

The Respondent submits this application for post-conviction relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on October 26, 1995. This application was filed on February 19, 2013, which was several years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to

“grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

The Respondent submits the Applicant’s claim of newly- or after-discovered evidence is without merit. For an applicant to be granted a new trial based on after-discovered evidence, he must show the evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citation omitted).

This Court notes the Applicant has failed to articulate the exact nature of the “new evidence” and has not attached any documentation of such to the PCR application. The Applicant has not shown that the alleged evidence meets any of the requirements for after-discovered evidence. Most importantly, the “new evidence” offered by the Applicant is not material to the issue of guilt or innocence, and probably would not change the result if a new trial was had. See id. The Respondent submits the Court should summarily dismiss this allegation.

State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) (“The credibility of newly-discovered evidence is for the trial court to determine.”).

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests the matter be summarily dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

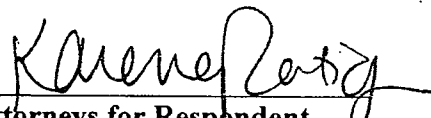
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

8/5, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2013-CP-23-0993

DARNELL EAST HUDSON, 227328)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

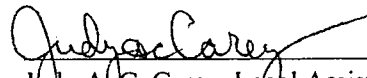
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Darnell East Hudson, 227328
 Lieber Correctional Institution
 Post Office Box 205
 Ridgeville SC 29472**

DATED this 5th day of August, 2013.


 Judy A.C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	2013-CP-23-0993
COUNTY OF GREENVILLE	)	
	)	
Darnell East Hudson,	)	
S.C.D.C. No. 227328,	)	
	)	
Applicant,	)	
	)	
v.	)	CONDITIONAL ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

2013 AUG 21 PM 4:02
FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKES

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 19, 2013. The Respondent made its Return, requesting the application be summarily dismissed.

I.

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant waived presentment to the Greenville County Grand Jury for armed robbery (1995-GS-23-6102) and assault and battery with intent to kill (1995-GS-23-6103). He was represented by Hal W. Roach, Esquire.

On October 26, 1995, the Applicant pled guilty to armed robbery and assault and battery of a high and aggravated nature (ABHAN). He was sentenced by the Honorable Marc Westbrook under the Youthful Offender Act to concurrent terms not to exceed six years for armed robbery and not to exceed six years suspended to five years probation for ABHAN. The Applicant did not appeal.

II.

In the application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Newly-after-discovered evid."
2. "Prosecution failed to disclose favorable evid."
 - a. Brady Violation.
3. "Involuntary guilty plea."

III.

This Court finds this matter should be summarily dismissed because the Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, *et. seq.* (2003). Specifically, South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *See Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this application on October 26, 1995. This application was filed on February 19, 2013, which was several years after the statutory filing period had expired.

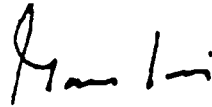
A motion for summary judgment may properly be used to raise the defense of statute of limitations. *See McDonnell v. Consolidated Sch. Dist. Of Aiken*, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from

the pleadings . . . that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law."

IV.

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Greenville County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Karen C. Ratigan, Post Office Box 11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 8 day of Aug., 2013.



D. Garrison Hill
Chief Administrative Judge
Thirteenth Judicial Circuit

_____, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2013CP230099

2013 AUG 21 PM 4:02
FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL WICKENSIMER

Darnell E Hudson vs. South Carolina State Of

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court;

Dated at Greenville, South Carolina, this 21st day of August, 2013.

Court Reporter:

PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 21st day of August, 2013, and a copy mailed first class this 21st day of August, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Darnell E Hudson Lieber Correctional Institution P
O Box 205 Ridgeville, SC 29472

ATTORNEY(S) FOR THE PLAINTIFF(S)

Karen Ratigan, P O Box 11549 Columbia SC
29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer - Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

DARNEIL E. HUDSON * 227328,

APPLICANT,

IN THE COURT OF COMMON PLEAS
FOR THE 13TH JUDICIAL CIRCUIT
FOR THE COUNTY OF GREENVILLE

C/A NO: 2013-CP-23-00993

V.

STATE OF SOUTH CAROLINA

RESPONDENT,

APPLICANT'S RESPONSE TO THE
RESPONDENT'S CONDITIONAL
ORDER OF DISMISSAL WITH
ATTACHED AFFIDAVIT AND
EXHIBITS TO SUPPORT APPLICANT'S
RESPONSE

- 1). APPLICANT HEREBY MOVES UPON THIS COURT BY RESPONSE TO THE RESPONDENT'S CONDITIONAL ORDER OF DISMISSAL IN HUDSON V. STATE C/A NO: 2013-CP-23-00993.
- 2). APPLICANT WAS GRANTED TWENTY (20) DAYS FROM THE DATE OF SERVICE OF THE CONDITIONAL ORDER OF DISMISSAL TO SHOW WHY THE ORDER OF DISMISSAL SHOULD NOT BECOME FINAL IN ITS ENTIRETY. THE CONDITIONAL ORDER OF DISMISSAL WAS ORDER BY THE HON. D. GARRISON HILL, CHIEF ADMINISTRATIVE JUDGE ON THE DATE OF AUGUST 8, 2013.

- 3). THE CONDITIONAL ORDER OF DISMISSAL WAS FILED UPON THE CLERK OF COURT ON THE DATE OF AUGUST 21, 2013.
- 4). ON THE DATE OF AUGUST 26, 2013, APPLICANT RECEIVED THE CONDITIONAL ORDER OF DISMISSAL FROM THE LIEBER CORR. INST. LEGAL MAIL SYSTEM WHERE APPLICANT IS CONFINED.
- 5). APPLICANT IS CONFINED IN THE SOUTH CAROLINA DEPT OF CORR. PURSUANT TO ORDERS OF COMMITMENT OF THE CLERK OF COURT FOR GREENVILLE COUNTY PURSUANT TO INDICTMENT NO: 1995-GS-23-6102 FOR ONE COUNT OF ARMED ROBBERY AND INDICTMENT NO: 1995-GS-23-6103 FOR ONE COUNT OF ASSAULT AND BATTERY WITH THE INTENT TO KILL WHICH APPLICANT WAIVED PRESENTMENT OF INDICTMENT TO THE GREENVILLE COUNTY GRAND JURY AND ENTER A PLEA OF GUILTY ON THE DATE OF OCTOBER 26, 1995 TO ARMED ROBBERY AND ASSAULT AND BATTERY OF AN HIGH AND AGGRAVATED NATURE AND WAS SENTENCED BY THE HON. MARC WESTBROOK UNDER A YOUTH OFFENDER ACT TO CONCURRENT TERMS NOT TO EXCEED SIX (6) YEARS FOR THE ARMED ROBBERY AND NOT TO EXCEED SIX (6) YEARS SUSPENDED TO FIVE (5) YEARS PROBATION FOR THE ASSAULT AND BATTERY OF AN HIGH AND AGGRAVATED NATURE.

- 6). APPLICANT WAS REPRESENTED BY MR. HAI W. ROACH, ESQ. FROM THE GREENVILLE COUNTY PUBLIC DEFENDER'S OFFICE.
- 7). APPLICANT DID NOT FILE NO APPEAL
- 8). APPLICANT FILED UPON THIS COURT OF COMMON PLEAS FOR GREENVILLE COUNTY AN APPLICATION FOR POST-CONVICTION RELIEF ON THE DATE OF FEBRUARY 19, 2013 PURSUANT TO S.C.R. (CRIM. P. RULE 29 (B) MOTION FOR NEW TRIAL BASED ON NEWLY - AFTER DISCOVERED EVIDENCE ALLEGING THAT PURSUANT TO S.C. CODE ANN § 17-27-20 (A) (1) (4) HE IS ENTITLED TO A NEW TRIAL DUE TO THE DISCOVERY OF THE VICTIM HASHAWSAN K. BROWN SUFFERING FROM BRAIN DAMAGE DEFECTS WHICH WAS CAUSED BY A SELF AFFLICTED GUN SHOT WOUND TO THE VICTIM HEAD IN A ATTEMPT TO COMMIT SUICIDE ON THE DATE OF NOVEMBER 27, 1993 WHICH THE PROSECUTION KNEW OF THE INCIDENT OF THE VICTIM SHOOTING HIMSELF IN HIS HEAD AND FAILED TO DISCLOSE THAT INFORMATION TO APPLICANT'S DEFENSE IN ITS S.C. R. CRIM. P. RULE 5 BRADY DISCLOSURE. (SEE: EXHIBIT (A))
- 9). ISSUES ALLEGED IN APPLICANT P.C.R. APPLICATION IS 1). THE PROSECUTION COMMITTED A S.C.R. CRIM. P. RULE 5 BRADY VIOLATION WHEN THE PROSECUTION FAILED TO DISCLOSE EXCULPATORY EVIDENCE IN ITS RULE 5 BRADY DISCLOSURE.

WHICH 2). RENDER APPLICANT'S GUILTY PLEA INVOLUNTARY.
 VIOLATION OF THE DUE PROCESS CLAUSE OF THE 5TH AND 14TH
 AMENDMENT OF THE UNITED STATES CONSTITUTION AMENDMENTS.

STATEMENT OF FACTS

ON THE SAID DATE OF MARCH 13, 1995 A ALLEGED VICTIM
 HASHAWSAN K. BROWN. REPORTED TO THE GREENVILLE CITY
 POLICE DEPT [OFC. JT BURGESS] THAT HE WAS ROBED AT
 GUN POINT AND ASSAULTED BY GETTING HIT IN HIS HEAD
 WITH A GUN BY TWO UNKNOWN BLACK INDIVIDUALS THAT
 HE ALLEGED ARMED ROBED HIM AND ASSAULTED HIM.
 THE VICTIM GAVE A SWORN STATEMENT TO THE GREENVILLE
 CITY POLICE DEPT AND IDENTIFIED APPLICANT OUT OF A
 PHOTO-LINE UP AS ONE OF THE ARMED ROBBERS AND THE
 ONE WHO ASSAULTED HIM. [THE VICTIM NEVER KNOWN
 OF APPLICANT PRIOR TO HIS STATEMENT AND IDENTIFICATION
 OF APPLICANT]. OFC. JT BURGESS WAS THE OFC. INVOLVED
 IN THE INVESTIGATION OF THE CASE. ON OR ABOUT MARCH
 14TH - 15TH OF 1995 THE GREENVILLE CITY POLICE DEPT
 OBTAINED A SEARCH WARRANT FOR APT- 40-E WOODLAND
 HOMES WHICH BELONGED TO APPLICANT'S CHILD'S MOTHER
 IN GREENVILLE COUNTY AND ON THAT NIGHT BY EXECUTING
 THE SEARCH WARRANT THE GREENVILLE CITY POLICE DEPT
 APPREHENDED APPLICANT AND ARRESTED AND CHARGED
 APPLICANT WITH 1). COUNT OF ARMED ROBBERY AND 1).

COUNT OF ASSAULT AND BATTERY WITH AN INTENT TO KILL. UPON THE SEARCH OF THE APT. THE GREENVILLE CITY POLICE DEPT FOUNDED NO EVIDENCE TO LINK APPLICANT AS THE ALLEGED ARMED ROBBER AND ASSAULTER. APPLICANT WAS APPOINTED COUNSEL, MR. HAI W. ROACH ESQ. BY THE GREENVILLE COUNTY PUBLIC DEFENDER'S OFFICE ON THE DATE OF OCTOBER 16, 1995 TO REPRESENT APPLICANT ON ALL CHARGES. SHORTLY AFTER ATTORNEY HAI ROACH WAS APPOINTED TO REPRESENT APPLICANT HE CAME TO THE GREENVILLE COUNTY DETENTION CENTER TO CONSULT WITH APPLICANT. APPLICANT WAS TOLD BY ATTORNEY HAI ROACH THAT IF HE WAS TO GO TO TRIAL ON THE CHARGES [IF] FOUNDED GUILTY APPLICANT COULD BE SENTENCED TO [30] YEARS ON THE ARMED ROBBERY CHARGE AND SENTENCED TO [25] YEARS ON THE ASSAULT AND BATTERY, WITH AN INTENT TO KILL CHARGE. APPLICANT TOLD ATTORNEY HAI ROACH SEVERAL TIMES THAT HE WAS INNOCENCE OF THE CHARGES. ATTORNEY HAI ROACH TOLD APPLICANT THAT THE VICTIM HAD WROTE A STATEMENT AND PICKED APPLICANT OUT OF A PHOTO-LINE UP AND THAT EVIDENCE ALONE COULD CONVICT HIM BY A JURY. ATTORNEY HAI ROACH TOLD APPLICANT THAT BEING THAT APPLICANT WAS 17 YEARS OLD AT THE TIME OF THE INCIDENT HE COULD GET APPLICANT A YOA SENTENCE AND PROBATION FOR THE CHARGES IF HE WAS TO PLEAD GUILTY SO HE COULD GET BACK TO HIS NEW BORN CHILD AND FAMILY SOONER. APPLICANT THOUGHT ABOUT THE [30] YEAR SENTENCE

PLUS THE [25] YEAR SENTENCE AND SPENDING ALL THAT TIME IN PRISON AND THAT THE STATEMENT AND THE PHOTO-LINE UP FROM THE VICTIM COULD HAVE HIM FOUNDED GUILTY BY A JURY IF HE WENT TO TRIAL FOR SOME THING HE DIDNT DO, SO APPLICANT TOLD ATTORNEY HAI ROACH THAT HE WOULD PLEA GUILTY TO THE YOA 1-6 AND PROBATION. ABOUT [10] DAYS AFTER ATTORNEY HAI ROACH WAS APPOINTED TO REPRESENT APPLICANT ON ALL CHARGES HE TOOK APPLICANT IN FRONT OF JUDGE MARC WESTBROOK AT A GUILTY PLEA HEARING. AT THE PLEA HEARING JUDGE WESTBROOK QUESTIONED APPLICANT ON THE RECORD HOW DO YOU PLEA AND APPLICANT STATED TO THE JUDGE, YOUR HONOR I DID NOT COMMIT THE CHARGES AGAINST ME. THE JUDGE THEN TOLD APPLICANT THAT IF YOU WAS TO GO TO TRIAL FOR THESE CHARGES HE COULD BE SENTENCED TO [30] YEARS FOR THE ARMED ROBBERY CHARGE AND [25] YEARS FOR THE ASSAULT AND BATTERY WITH AN INTENT TO KILL [IF] FOUNDED GUILTY BY A JURY. SO APPLICANT TOLD THE JUDGE THAT HE WOULD PLEA JUST TO GET IT OVER WITH SO HE COULD GET BACK TO HIS CHILD AND LOVE ONES SOONER, SO ON THE DATE OF OCTOBER 26, 1995 JUDGE WESTBROOK ACCEPTED APPLICANT'S PLEA AND SENTENCED APPLICANT TO A Y.O.A. 1-6 SENTENCE AND 5 YEARS PROBATION FOR ALL CHARGES. AT [NO] TIME PRIOR TO THE GUILTY PLEA HEARING OR THROUGHOUT THE GUILTY PLEA HEARING THE PROSECUTION DISCLOSE

TO THE DEFENSE THAT THE VICTIM HAD SHOT HIMSELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE PRIOR TO THE ALLEGED ARMED ROBBERY AND ASSAULT INCIDENT AND THAT THEY BELIEVED THE VICTIM SUFFERED FROM BRAIN DAMAGE DEFECTS. THE PROSECUTION KNEW OF THE INCIDENT WITH THE VICTIM SHOOTING HIMSELF IN HIS HEAD DUE TO THE VICTIM TELLING THE POLICE THAT HE SHOT HIMSELF IN HIS HEAD AND THAT HE NEEDED MEDICAL HELP BECAUSE HE WAS STRUCK IN HIS HEAD WITH THE BUTT OF A HAND GUN. WHICH LEAD TO THE VICTIM BEING TRANSPORTED TO THE EMERGENCY ROOM. AFTER HE TOLD THE POLICE ABOUT THE INCIDENT ON NOVEMBER 27, 1993.

ON THE DATE OF JANUARY 23, 2013 APPLICANT DISCOVERED THIS EVIDENCE ABOUT THE VICTIM SHOOTING HIMSELF IN HIS HEAD PRIOR TO THE ALLEGED ARMED ROBBERY AND ASSAULT AND THAT THE VICTIM SUFFERED FROM BRAIN DAMAGE DEFECTS THAT AFFECTED HIS MEMORY. APPLICANT DISCOVERED THIS INFORMATION BY TALKING TO THE VICTIM CLOSE FRIEND JERMAN BARTON WHICH IS FROM GREENVILLE SOUTH CAROLINA.

ON FEBRUARY 19, 2013 APPLICANT FILED UPON THIS COURT OF COMMON PLEAS FOR GREENVILLE COUNTY AN APPLICATION FOR P.C.R. ALLEGING THAT HE DISCOVERED NEWLY - AFTER DISCOVERED EVIDENCE THAT 1). THE VICTIM SHOT HIMSELF

IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE PRIOR TO THE ALLEGED ARMED ROBBERY AND ASSAULT THAT ALLEGINGLY TOOK PLACE ON MARCH 13, 1995 AND 2). THE PROSECUTION COMMITTED A BRADY VIOLATION BY FAILING TO DISCLOSE FAVORABLE EVIDENCE [EXCULPATORY EVIDENCE] TO THE DEFENCE. SEE: EXHIBIT (A)

UPON FURTHER INVESTIGATION INTO THIS MATTER PRESENTED, APPLICANT REQUESTED FOR HIS GRANDMOTHER MS. MARGARET D. FAIRFAX TO HELP ASSIST APPLICANT IN LOCATING THE VICTIM HASHAWSAN K. BROWN AND QUESTION HIM ABOUT THE INCIDENT OF HIM SHOOTING HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE AND DO HE RECALL THE INCIDENT WHEN HE ALLEGELY GOT ARMED ROBED AND ASSAULTED ON MARCH 13, 1995 BY APPLICANT DUE TO APPLICANTS POVERTY TO AFFORD AN PRIVATE INVESTIGATOR OR LEGAL COUNSEL IN THIS MATTER.

ON THE DATE OF APRIL 29TH, 2013 MS. MARGARET D. FAIRFAX LOCATED THE VICTIM HASHAWSAN K. BROWN AT THE LOCATION OF 1 PRANCER AVE. IN GREENVILLE SOUTH CAROLINA AND QUESTIONED THE VICTIM CONCERNING HIM SHOOTING HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE WHICH THE VICTIM DID STATE TO HER THAT HE DID SHOOT HIMSELF IN HIS HEAD. THE VICTIM HAD AGREED TO TURN OVER HIS MEDICAL RECORDS TO HER. SEE EXHIBIT (B)

ON THE DATE OF JUNE 1, 2013 MS. MARGARET D. FAIRFAX WITH APPLICANT'S MOTHER MS. CRYSTAL M. SILVER LOCATED HASHAWSAN K. BROWN AND WITNESS MS. MARGARET D. FAIRFAX QUESTIONED HIM IN FRONT OF APPLICANT'S MOTHER MS. CRYSTAL M. SILVER CONCERNING THE INCIDENT WITH HIM ALLEGINGLY BEING ARMED ROBED AND ASSAULTED BY APPLICANT ON MARCH 13TH 1995 AND ALSO ABOUT THE INCIDENT OF HIM SHOOTING HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE WHICH HASHAWSAN K. BROWN STATE THAT HE DID SHOT HIMSELF IN HIS HEAD AND THAT HE DONT RECALL BEING ARMED ROBED AND ASSAULTED ON MARCH 13, 1995. HE FURTHER STATED THAT HE DIDNT KNOW OF APPLICANT AND DONT RECALL PICKING APPLICANT OUT OF A PHOTO LINE UP OR WRITING A STATEMENT AGAINST APPLICANT. SEE EXHIBIT (C) AND (D)

ON THE DATE OF JUNE 1, 2013 THE VICTIM HASHAWSAN K. BROWN HAD SUBMITTED A SWORN AFFIDAVIT STATING THAT, I HASHAWSAN K. BROWN IS WRITING THIS SWORN AFFIDAVIT TO THE BEST OF MY ABILITY, TO WHOM THIS MAY CONCERN THAT ON NOVEMBER 27TH 1993 I SHOT MYSELF IN THE HEAD, DUE TO THAT FACT I SUFFERED A TRAUMATIC BRAIN INJURY. AND SUPPOSEDLY IDENTIFIED DARNELL HUDSON WHOM I HAVE NEVER SEEN OR KNOWN. STILL TO THIS DAY MY BRAIN INJURY AFFECTS MY EVERY DAY LIFE. I HAVE SHORT AND LONG

TERM. MEMORY PROBLEMS. I AM AND WILL BE UNDER DOCTOR'S CARE FOR THE REMAINDER OF MY LIFE. III. HASHAWSAN K. BROWN DECLARE UNDER PERJURY AND PENALTY THE FACTS STATED ABOVE ARE TRUE AND CORRECT. SEE: EXHIBIT (E)

ON THE DATE OF JULY 10, 2013 THE VICTIM TURNED OVER ALL THE MEDICAL RECORDS HE HAD AT THAT TIME TO MRS. MARGARET D. FAIRFAX SEE EXHIBIT (F) (G)

ON THE DATE OF JULY 15, 2013 APPLICANT RECEIVED THE AFFIDAVITS OF MRS. MARGARET D. FAIRFAX, MRS. CRYSTAL M. SILVER AND HASHAWSAN K. BROWN WITH THE MEDICAL RECORDS OF THE VICTIM. SEE EXHIBITS (B) (C) (D) (E) (F) (G)

ON THE DATE OF AUGUST 26, 2013 APPLICANT WAS SERVED THE CONDITION ORDER OF DISMISSAL AND WAS GRANTED TWENTY (20) DAYS TO THE RESPONDENT'S CONDITIONAL ORDER OF DISMISSAL SEE: EXHIBIT (I)

APPLICANT'S RESPONSE TO THE RESPONDENT'S CONDITIONAL ORDER OF DISMISSAL NOW FOLLOWS:

I.

RESPONSE TO THE RESPONDENT'S FIRST CAUSE OF DEFENSE FOR SUMMARY JUDGMENT DUE TO STATUTE OF LIMITATION.

THE RESPONDENT REQUEST UPON THIS COURT TO SUMMARY DISMISS APPLICANT'S POST-CONVICTION RELIEF APPLICATION BECAUSE APPLICANT HAS ALLEGINSLY FAILED TO COMPLY WITH

THE FILING PROCEDURES ACT, S.C. CODE ANN. § 17-27-10, ET SEQ. (2003), SPECIFICALLY S.C. CODE ANN. § 17-27-45 (A) WHICH READS AS FOLLOWS:

AN APPLICATION FOR RELIEF FILED PURSUANT TO THIS CHAPTER MUST BE FILED WITHIN ONE YEAR AFTER THE ENTRY OF A JUDGMENT OF CONVICTION OR WITHIN ONE YEAR AFTER THE SENDING OF THE REMITTITUR TO THE LOWER COURT FROM AN APPEAL OR THE FILING OF THE FINAL DECISION UPON AN APPEAL WHICH IS LATER. THUS, THE SOUTH CAROLINA SUPREME COURT HAS HELD THAT THE STATUTE OF LIMITATION SHALL APPLY TO ALL APPLICATIONS FILED AFTER JULY 1, 1996 SEE PELOQUIN V. STATE 321 S.C. 468, 469 SE2d 606 (1996)

THE RESPONDENT ALLEGES THAT APPLICANT WAS CONVICTED OF THE OFFENSES HE CHALLENGES IN THIS APPLICATION ON OCTOBER 26, 1995 WHICH IS SEVERAL YEARS AFTER THE STATUTORY FILING PERIOD HAD EXPIRED.

THE RESPONDENT SEEK SUMMARY JUDGMENT PURSUANT TO MCDONNELL V. CONSOLIDATED SCH DIST OF AIKEN, 315 S.C. 487, 445 SE2d 638 (1994) ALLEGING THAT A MOTION FOR SUMMARY JUDGMENT MAY PROPERLY BE USED TO RAISE THE DEFENSE OF STATUTE OF LIMITATION, IN ADDITION; THE RESPONDENT ALLEGES THAT PURSUANT TO S.C. CODE ANN § 17-27-70 (C) (2003) AUTHORIZES THE COURT TO GRANT A MOTION BY EITHER PARTY FOR SUMMARY DISPOSITION OF [AN] APPLICATION WHEN IT APPEARS FROM THE PLEADINGS, THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT AND THAT THE MOVING PARTY IS

ENTITLED TO JUDGMENT AS A MATTER OF LAW.

WHEN A MOVING PARTY PROPERLY SUPPORTS ITS MOTION SHOWING THAT IT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW, THE PARTY OPPOSING THE MOTION MUST PRESENT "AFFIRMATIVE EVIDENCE" TO ESTABLISH A GENUINE DISPUTE OF MATERIAL FACT WHICH IS NECESSARY TO DEFEAT A SUMMARY JUDGMENT MOTION. PRYE V. ESTATE OF FOX, 633 SE2d 505. THUS, IN DETERMINING WHETHER TO GRANT SUMMARY JUDGMENT A COURT MUST REVIEW ALL EVIDENCE AND ALL REASONABLE INFERENCES THEREFROM IN THE LIGHT MOST FAVORABLE TO THE NON-MOVING PARTY BYRD V. CITY OF HARTSVILLE, 365 S.C. 650, 620 SE2d 76. IN P.C.R. ACTIONS, P.C.R. ACTIONS IS GOVERNED BY USUAL RULES OF CIVIL PROCEDURES, S.C. CODE ANN 17-27-80, THUS WHEN CONSIDERING THE RESPONDENTS MOTION FOR SUMMARY DISMISSAL OF AN APPLICATION FOR POST CONVICTION RELIEF, A COURT MUST VIEW THOSE FACTS IN THE LIGHT MOST FAVORABLE TO APPLICANT. WILSON V. STATE 348 S.C. 215, 559 SE2d 581.

IN APPLICANT'S RESPONSE TO THE RESPONDENTS SUMMARY JUDGMENT MOTION, APPLICANT HEREBY SHOW THIS COURT THAT A TRIABLE ISSUE OF MATERIAL FACT EXIST AND THE APPLICANTS DISPUTE AGAINST THE RESPONDENTS MOTION FOR SUMMARY DISMISSAL OF APPLICANTS P.C.R. APPLICATION DUE TO STATUTE OF LIMITATION SHOULD BE DENIED DUE TO S.C. CODE ANN 17-27-45(c) WHICH READS AS FOLLOWS:

DISCOVERY RULE, APPLICATION MUST BE FILED UNDER

THIS CHAPTER WITHIN ONE YEAR AFTER THE DATE OF ACTUAL DISCOVERY OF THE FACTS BY THE APPLICANT OR, AFTER THE DATE WHEN THE FACTS COULD HAVE BEEN ASCERTAINED BY THE EXERCISE OF REASONABLE DILIGENCE TILLEY V. STATE, 511 S.E. 2d, 689.

IN REVIEWING THE EVIDENCE IN LIGHT MOST FAVORABLE TO APPLICANT, APPLICANT SHOWS THIS COURT THAT APPLICANT HAD DISCOVERED ON THE DATE OF JANUARY 23, 2013 EXCULPATORY EVIDENCE THAT THE VICTIM HASKAW SAN K. BROWN HAD SHOT HIMSELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE WHICH CAUSED BRAIN DAMAGE TO THE VICTIM'S BRAIN. SEE EXHIBIT (F) (G).

BY GAINING KNOWLEDGE OF THE VICTIM SUFFERING FROM BRAIN DAMAGE DEFECTS APPLICANT CLAIM OF NEWLY AFTER DISCOVERED EVIDENCE FALL IN THE ACTUAL DISCOVERY RULE OF 17-27-45 (C). PRIOR TO THE INFORMATION PROVIDED BY JERMAN BARTON WHICH IS A FRIEND OF THE VICTIM. APPLICANT LACKED KNOWLEDGE OF THE INCIDENT ON NOVEMBER 27, 1993 WHICH THE VICTIM HAD SHOT HIMSELF IN HIS TEMPLE IN A ATTEMPT TO COMMIT SUICIDE. SEE EXHIBIT (F)

IT WAS NO WAY POSSIBLE APPLICANT COULD OF FILED A P.C.R. APPLICATION WITHIN THE (1) YEAR OF THE STATUTORY FILING PERIOD PURSUANT TO S.C. CODE ANN § 17-27-45 (A) ON THE ISSUE PRESENTED WHEN APPLICANT LACK KNOWLEDGE OF THE VICTIM'S SUICIDE ATTEMPT, THUS THE EXCULPATORY EVIDENCE WHICH WAS NEWLY DISCOVERED WAS IMPOSSIBLE TO DISCOVERED

WITHIN THE (1) YEAR FILING PERIOD PURSUANT TO S.C. CODE ANN § 17-27-45 (A) WITHOUT NO LEADS TO THE EXISTENCE OF THE ACTUAL FACT THAT THE VICTIM HAD SHOT HIMSELF IN HIS HEAD IN AN SUICIDE ATTEMPT WHICH CAUSED BRAIN DAMAGE TO THE VICTIM.

APPLICANT HAD FILED THIS P.C.R. APPLICATION WITHIN THE (1) YEAR STATUTORY FILING PERIOD PURSUANT TO S.C. CODE ANN. 17-27-45 (C) SO PURSUANT TO THE DISCOVERY RULE APPLICANT'S P.C.R. APPLICATION IS TIMELY FILED. IN THE INTEREST OF FAIRNESS APPLICANT SHOULD BE APPOINTED COUNSEL TO APPLICANT PURSUANT TO GRAY V. STATE, 347 S.C. 627, 557 SE 2d 662. DUE TO THE ISSUE PRESENTED APPLICANT REQUEST UPON THIS COURT TO CONTINUE THIS MATTER IN HUDSON V. STATE C/A NO: 2013-CP-23-00993.

II.

APPLICANT'S RESPONSE TO THE RESPONDENT'S SECOND CAUSE OF DEFENSE TO APPLICANT'S NEWLY AFTER DISCOVERED EVIDENCE CLAIM

IN RESPONSE TO THE RESPONDENT'S ALLEGATIONS THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT EXIST TO APPLICANT'S NEWLY - AFTER DISCOVERED EVIDENCE CLAIM, APPLICANT HEREBY SHOW THIS COURT THAT A DISPUTE EXIST BETWEEN APPLICANT AND THE RESPONDENT, THE RESPONDENT ALLEGES THAT THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT EXIST TO APPLICANT'S NEWLY - AFTER DISCOVERY CLAIM, THAT APPLICANT'S CLAIM IS WITHOUT MERIT, THAT APPLICANT HAS FAILED TO ARTICULATE THE EXACT NATURE OF THE NEW EVIDENCE. THE RESPONDENT

ALSO ALLEGES THAT APPLICANT HAS NOT SHOWN THAT THE ALLEGED EVIDENCE MEETS ANY REQUIREMENTS FOR AFTER DISCOVERED EVIDENCE, MOST IMPORTANTLY, THE RESPONDENT ALLEGED THAT THE NEWLY EVIDENCE OFFERED BY APPLICANT IS NOT MATERIAL TO THE ISSUE OF GUILT OR INNOCENCE, AND PROBABLY WOULD NOT CHANGE THE RESULT IF A NEW TRIAL WAS HAD. IN THE RESPONDENTS RETURN AND MOTION TO DISMISS THE RESPONDENT REQUESTED UPON THIS COURT TO DISMISS APPLICANT'S P.C.R. APPLICATION IN ITS ENTIRETY.

APPLICANT ALLEGES THAT HE DO HAVE A GENUINE ISSUE OF MATERIAL FACT WHICH HE IS ENTITLED TO AN EVIDENTIARY HEARING ON THE MERIT OF THIS NEWLY-AFTER DISCOVERED EVIDENCE CLAIM WHICH APPLICANT PRESENT TO THIS COURT THAT

- 1). THE ALLEGED VICTIM HASHAWSAN K. BROWN HAD SHOT HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE ON THE DATE OF NOVEMBER 27, 1993 SEE EXHIBIT (F).
- 2). THAT THE VICTIM HASHAWSAN K. BROWN HAD SUFFERED FROM BRAIN DAMAGE WHICH CAUSED A DEFECT TO THE VICTIM MEMORY, HIGHER LEVEL COGNITIVE SKILLS, REASONING, ATTENTION, CONCENTRATION, JUDGMENT, PROCESSING SPEED, COPING SKILLS, WRITTEN EXPRESSION AND VISUAL ACUITY. ALL DEFECTS WAS CAUSED BY THE VICTIM HASHAWSAN K. BROWN SHOOTING HIMSELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE ON NOVEMBER 27, 1993 (3).
- THAT 14 MONTHS AFTER THE SUICIDE ATTEMPT BY THE VICTIM HE REPORTED TO THE GREENVILLE CITY POLICE DEPT ON THE DATE OF MARCH 13, 1995 THAT HE WAS ARMED ROBBERED AND ASSAULTED BY TWO UNKNOWN BLACK INDIVIDUALS (4).
- THAT SHORTLY AFTER HE REPORTED TO THE POLICE THAT HE

WAS ROBBED AND ASSAULTED BY 2 UNKNOWN BLACK INDIVIDUALS HE [THE VICTIM] PICKED APPLICANT OUT OF A PHOTO LINE UP AND WROTE A SWORN STATEMENT AGAINST APPLICANT WHICH LEAD TO THE ARREST AND CONVICTION OF APPLICANT. DUE TO THE UNUSUAL CIRCUMSTANCE APPLICANT IS ALLEGING IN HIS P.C.R. APPLICATION THE PROSECUTION VIOLATED S.C.R. CRIM. P. RULE 5 BRADY DISCLOSURE WHICH RENDER APPLICANT'S GUILTY PLEA INVOLUNTARY IS APPARENT ON THE FACE OF THE APPLICATION THAT AN EVIDENTIARY HEARING IS REQUIRED, TO DEVELOPE FACTS TO SUPPORT APPLICANT'S ENTITLEMENT TO RELIEF STATE V. PROCTOR 358 S.C. 424, 595 SE 2d 480 WHICH HELD: WHERE A DEFENDANT MAKES A THRESHOLD SHOWING THAT THE UNDISCLOSED EVIDENCE HE SOUGHT CONTAINED EXCUIPATORY MATERIAL OR IMPEACHMENT EVIDENCE AND, THUS, SHOWS THAT THE EVIDENCE IS MATERIAL WITHIN MEANING OF BRADY AND RULES OF CRIM. PROCEDURE; THE TRIAL JUDGE SHOULD CONDUCT A HEARING, THUS, IN APPLICANT P.C.R. APPLICATION ALLEGES THAT 1). THE EVIDENCE THAT THE PROSECUTION WITH HELD WAS FAVORABLE TO APPLICANT. 2). IT WAS IN THE POSSESSION OF OR KNOWN OR SHOULD OF BEEN KNOWN TO THE PROSECUTION, (3). IT WAS SUPPRESSED BY THE PROSECUTION AND (4). IT WAS MATERIAL UNDER EXCUIPATORY EVIDENCE U.S. V. BASKY, 473 U.S. 667, STATE V. VON DONIKEN, 360 S.C. 598.

APPLICANT MAKES A PRIMA FACIE SHOWING UPON THIS COURT THAT 1). THE EVIDENCE THE PROSECUTION WITH HELD WAS FAVORABLE TO APPLICANT BECAUSE THE EVIDENCE OF THE VICTIM SHOOTING HIMSELF IN HIS HEAD IN A

ATTEMPT TO COMMIT SUICIDE AND SUFFERING FROM BRAIN DAMAGE WHICH AFFECTED THE VICTIM MEMORY, HIGHER LEVEL COGNITIVE SKILLS, REASONING, ATTENTION, CONCENTRATION, JUDGMENT, PROBLEM SOLVING, PROCESSING SPEED, COPING SKILLS, WRITTEN EXPRESSION, AND VISUAL ACUITY SUBJECTED THE VICTIM TO BE INCOMPETENT TO STAND TRIAL TO TESTIFY AGAINST APPLICANT, FURTHERMORE, THIS EVIDENCE COULD OF SHED A DIFFERENT LIGHT MOST FAVORABLE TO APPLICANT BECAUSE DUE TO THE VICTIM'S DEFECTS ITS A REASONABLE PROBABILITY APPLICANT IS TRULY INNOCENCE AND THE VICTIM PICKED THE WRONG INDIVIDUAL OUT OF THE PHOTO LINE UP. NEIL V. BIGGER 409 U.S. 188, STOVALL V. DENNO 388 U.S. 293, THIS EVIDENCE SHOULD OF BEEN DISCLOSED BECAUSE APPLICANT HAD THE U.S. CONST. RIGHT UNDER THE 6TH AMEND. TO CONFRONT THIS VICTIM IN A COMPETENCY HEARING TO CHALLENGE THE VICTIM'S COMPETENCY TO STAND TRIAL STATE V. NUNDS (S.C. 1998) 508 SE 2d 257 JOHNSON V. CATOE (S.C. 2001) 548 SE 2d 587. THUS, IT WAS THE COURT DETERMINATION TO QUALIFY OR DISQUALIFY THE VICTIM FROM TESTIFYING AGAINST APPLICANT.

2). THIS EVIDENCE WAS IN THE POSSESSION OF THE PROSECUTION BECAUSE THE VICTIM WAS TRANSPORTED TO THE HOSPITAL TO BE SEEN BY A DOCTOR BECAUSE OF HIM BEING STRUCK IN HIS HEAD WITH A GUN BY ONE OF THE ALLEGED ARMED ROBBERS, THUS, THE PROSECUTION WAS REQUIRED TO KNOW OF ITS WITNESS INJURY TO HIS HEAD THAT WAS CAUSED BY ONE OF THE ARMED ROBBERS STRIKING THE VICTIM. THE

STRIKING OF THE VICTIM COULD OF CAUSED GREAT DAMAGE TO THE VICTIM BRIAN SO PURSUANT TO KYLE V. WHITLEY, 514 U.S. 433, 115 S.C.T. 1565 IF THE PROSECUTION DIDNT KNOW THEY SHOULD HAVE KNEW ABOUT THE VICTIM'S BRAIN DEFECTS, WHICH WAS CAUSED BY THE VICTIM SHOOTING HIMSELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE. THE VICTIM WAS THE ESSENCE TO THE STATE CASE AND THE ONLY ONE COULD TESTIFY TO WHAT HAPPENED ON MARCH 13TH 1995.

3). THE EVIDENCE WAS SUPPRESSED WHEN THE PROSECUTION WITHHELD THE EXCULPATORY EVIDENCE FROM THE DEFENSE THAT THE VICTIM SHOT HIMSELF IN HIS HEAD, FURTHERMORE, IT WAS THE PROSECUTION DUTY TO DISCLOSE THAT INFORMATION TO APPLICANT'S ATTORNEY. EVEN WHEN NOT REQUESTED WHEN SUCH EVIDENCE HAVE A REASONABLE PROBABILITY TO UNDERMINE CONFIDENCE IN THE STATE CASE. U.S. V. LAGUES, 96 S.C.T. 2392

4). THIS EVIDENCE WAS MATERIAL UNDER THE EXCULPATORY EVIDENCE RULE BECAUSE IT HAD A REASONABLE PROBABILITY TO UNDERMINE CONFIDENCE IN THE STATE CASE KYLE V. WHITLEY 514 U.S. 433, 115 S.C.T. 1565. BAGLEY SUPRA.

PURSUANT TO GIBSON V. STATE, 514 SE 2d 320 A BRADY VIOLATION. CAN RENDER ONE'S GUILTY plea INVOLUNTARY BECAUSE WHEN A DEFENDANT LACKS KNOWLEDGE OF MATERIAL EVIDENCE IN THE PROSECUTION POSSESSION, THE WAIVER OF CONSTITUTIONAL RIGHTS CANNOT BE DEEM KNOWINGLY AND VOLUNTARY. THE GOVERNMENT

OBLIGATION TO MAKE SUCH DISCLOSURE OF BRADY MATERIAL IS PERTINENT NOT ONLY TO AN ACCUSED'S PREPARATION FOR TRIAL BUT ALSO TO HIS DETERMINATION OF WHETHER OR NOT TO PLEA GUILTY. A DEFENDANT IS ENTITLED TO MAKE THAT DECISION WITH FULL AWARENESS OF FAVORABLE MATERIAL EVIDENCE KNOWN TO THE PROSECUTION U.S. V. AVELLINO 136 F.3d. 249 AS IN THE CONTEXT OF A TRIAL, A MATERIALITY REQUIREMENT EXISTS, A BRADY VIOLATION IS MATERIAL WHEN THERE IS A REASONABLE PROBABILITY THAT, BUT FOR THE PROSECUTION VIOLATION ITS A REASONABLE PROBABILITY A DEFENDANT WOULDNT PLEAD GUILTY BUT INSISTED TO STAND TRIAL. GIBSON SUPRA.

HAD APPLICANT WOULD OF KNOWN OF THIS EXCULPATORY EVIDENCE OF THE VICTIM SUFFERING FROM BRAIN DAMAGE DEFECTS WHICH EFFECTED THE VICTIM MEMORY. APPLICANT WOULD OF NEVER PLEAD GUILTY BUT WOULD OF INSISTED TO CHALLENGE THE VICTIM COMPETENCY TO STAND TRIAL.

III.

PURSUANT TO THE BRADY CLAIM AND THE INVOLUNTARY GUILTY PLEA CLAIM THE RESPONDENT FAILED TO PLEA ANY AFFIRMATIVE DEFENSE PURSUANT TO S.C.R. CIV. P. RULE 12 (B) (6) TO APPLICANT'S ISSUES OF 1). THE PROSECUTION VIOLATED S.C.R. CRIM. P. RULE 5 DISCLOSURE BY FAILING TO DISCLOSE EXCULPATORY EVIDENCE TO APPLICANT'S DEFENSE WHICH 2). REMOVE APPLICANT'S GUILTY PLEA INVOLUNTARY. APPLICANT RAISED THESE CLAIMS IN HIS P.C.R. APPLICATION AND MOTION FOR NEW TRIAL. SEE EXHIBIT (A) BY THE RESPONDENT FAILURE TO PLEA AN AFFIRMATIVE DEFENSE TO THOSE ISSUES IN ITS RETURN, MOTION TO DISMISS, OR

CONDITION OR GROUNDS OF DISMISSAL THE RESPONDENT HAS NOW
 WAIVED THE RIGHT TO ASSERT ANY DEFENSE TO THE BRADY
 VIOLATION ISSUE AND THE INVOLUNTARY GUILTY PLEA ISSUE.
 PURSUANT TO S.C.R. CIV. P. RULE 12 (H) (1) AND (2). DEARYBURY
V. STATE 367 S.C. 34, 625 SE2d 212. WHITEHEAD V. STATE
 325 S.C. 215, 574 SE2d 200. THEREFORE, APPLICANT
 REQUEST UPON THIS COURT TO CONTINUE THIS MATTER IN HUDSON
V. STATE CIA NO: 2013-CP-23-00993 AND GRANT AN
 EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL.

IIII

IN THE RESPONDENT'S RETURN AND MOTION TO DISMISS, THE
 RESPONDENT ALLEGES THAT APPLICANT FAILED TO ARTICULATE
 THE NATURE OF THE NEWLY AFTER DISCOVERED EVIDENCE
 IS FABRICATED, THE RESPONDENT USE THE STANDARD OUTLINED
 IN SPANN TO SEEK SUMMARY DISMISSAL TO APPLICANTS P.C.R.
 APPLICATION BY ALLEGING THAT APPLICANT CANT MEET THE REQUIREMENTS
 SET FORTH IN STATE V. SPANN 334 S.C. 618, 513 SE2d 98 (1999).
 IN SPANN, A NEW TRIAL MOTION BASED UPON AFTER- DISCOVERED
 EVIDENCE SHOULD BE GRANTED WHEN THE EVIDENCE IS (1). SUCH
 THAT IT WOULD PROBABLY CHANGE THE RESULT IF A NEW TRIAL
 WERE GRANTED, (2). HAS BEEN DISCOVERED SINCE THE TRIAL, (3).
 COULD NOT IN THE EXERCISE OF DUE DILIGENCE HAVE BEEN
 DISCOVERED PRIOR TO TRIAL, (4). IS MATERIAL, AND (5). IS NOT
 MERELY CUMULATIVE OR IMPEACHING.

APPLICANT HEREBY MAKES A PRIMA FACIE SHOWING TO THIS
 COURT THAT (1). THE NEWLY - AFTER DISCOVERED EVIDENCE

THAT HE DISCOVERED IS SUCH THAT IT WOULD PROBABLY CHANGE THE RESULT IF A NEW TRIAL WAS GRANTED.

APPLICANT ALLEGES THAT IF A NEW TRIAL WAS GRANTED HE FACES ACQUITTAL ON THE CHARGES FOR ARMED ROBBERY AND ASSAULT AND BATTERY WITH INTENT TO KILL DUE TO THE VICTIM BEING INCOMPETENT TO STAND TRIAL AND TESTIFY AGAINST APPLICANT. THE VICTIM HAD SUFFERED FROM BRAIN DAMAGE WHICH WAS CAUSED BY THE VICTIM SHOOTING HIMSELF IN HIS HEAD IN A ATTEMPT TO COMMIT SUICIDE ON NOVEMBER 27, 1993 SEE EXHIBIT (E) (F) (G) THE VICTIM WAS THE ESSENCE OF THE STATE CASE. HE WAS ESSENTIAL TO ITS INVESTIGATION AND INDEED MADE THE CASE AGAINST APPLICANT. THUS, WITHOUT THE VICTIM TESTIFYING AGAINST APPLICANT THERE IS NO OTHER EVIDENCE TO LINK APPLICANT TO THE CRIME THE EVIDENCE THAT APPLICANT DISCOVERED IS EXCULPATORY WHICH IT COULD SHIELD A DIFFERENT RESULT IN THIS CONVICTION BECAUSE WITHOUT NO IDENTIFICATION EVIDENCE, NO TESTIMONIAL EVIDENCE, FROM THE VICTIM AND NO STATEMENT FROM THE VICTIM APPLICANT CHARGES WOULD BE DISMISSED.

(2). EVIDENCE BEEN DISCOVERED SINCE TRIAL

ON THE DATE OF OCTOBER 26, 1995 APPLICANT PLEAD GUILTY TO THE CHARGES OF ARMED ROBBERY AND ASSAULT AND BATTERY WITH AN HIGH ASSRAVATED NATURE. ON THE DATE OF JANUARY 23, 2013 APPLICANT DISCOVERED THIS NEWLY AFTER DISCOVERED EVIDENCE WHICH WAS SINCE THE 1995 PLEA HEARINGS.

(3). THE EVIDENCE APPLICANT DISCOVERED COULD NOT IN THE EXERCISE OF DUE DILIGENCE COULD OF BEEN DISCOVERED PRIOR TO TRIAL.

APPLICANT AND APPLICANT DEFENSE ATTORNEY WAS EXCUSABLY IGNORANT TO THE EXISTENCE OF THE VICTIM'S BRAIN DAMAGE DEFECTS WHICH WAS CAUSED BY THE VICTIM SHOOTING HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE. FURTHERMORE, APPLICANT NOR APPLICANT'S DEFENSE ATTORNEY NEVER KNEW OF THE VICTIM PERSONALLY AND WITHOUT NO LEADS FROM THE INCIDENT THAT TOOK PLACE ON NOVEMBER 27, 2013 OR THE VICTIM BRAIN DAMAGE DEFECTS IT WAS IMPOSSIBLE FOR APPLICANT DEFENSE ATTORNEY TO HAVE ANY KNOWLEDGE OF THE VICTIM'S MEDICAL RECORDS OR TO EVEN ATTAIN THE VICTIM'S MEDICAL RECORDS BECAUSE THE VICTIM MEDICAL RECORDS ARE NOT AVAILABLE OR ATTAINABLE FROM PUBLIC RECORDS, THUS, S.C. CODE ANN. 44-115-20 PROHIBITS THE DISCLOSURE OF CONFIDENTIAL MEDICAL RECORDS THUS, THEIR MEDICAL RECORDS COULD OF ONLY BEEN PROVIDED TO APPLICANT'S DEFENSE BY THE ALLEGED VICTIM HIMSELF.

4). THE EVIDENCE APPLICANT DISCOVERED IS MATERIAL
THE EVIDENCE OF THE VICTIM SHOOTING HIMSELF IN HIS HEAD AND SUFFERING FROM BRAIN DAMAGE DEFECTS IS EXCULPATORY EVIDENCE. THIS EVIDENCE CAN PRODUCE A REASONABLE PROBABILITY TO CHANGE A DIFFERENT VERDICT OR OUTCOME IN THE CASE.

BECAUSE THE VICTIM COULD OF PICKED THE WRONG INDIVIDUAL OUT OF THE PHOTO LINE UP AND WROTE THE STATEMENT ON THE WRONG PERSON WHICH IS APPLICANT. APPLICANT STATED THAT HE WAS INNOCENT OF THE CRIME AGAINST THE VICTIM AND ONLY PLEAD GUILTY TO THE CHARGES BECAUSE HE WAS AFRAIDED OF GETTING FOUND GUILTY AND SENTENCED TO 30 YEARS FOR THE ARMED ROBBERY AND 25 YEARS FOR THE ASSAULT AND BATTERY WITH THE INTENT TO KILL CHARGES.

(5). THE EVIDENCE APPLICANT DISCOVERED IS NOT IMPROVING OR MERELY CUMULATIVE.

THE EVIDENCE APPLICANT PRESENT TO THIS COURT IS EXCULPATORY EVIDENCE TO SHOW THIS COURT THE VICTIM IS INCOMPETENT TO STAND TRIAL AND TESTIFY AGAINST APPLICANT.

PURSUANT TO STATE V. HARRIS, 706 SE 2d 529 THE CREDIBILITY OF NEWLY - AFTER DISCOVERED EVIDENCE IS FOR THE TRIAL COURT TO DETERMINE. THUS, UNDER MILBY V. STATE 737 SE 2d. 425, AND SHARPLE V. STATE 305 SE 2d. 247 APPLICANT IS ENTITLED TO AN EVIDENTIARY HEARING FOR THE COURT TO DETERMINE THE MERIT OF THE ISSUES PRESENTED AND TO TEST THE VICTIM'S COMPETENCY TO TESTIFY AT A NEW TRIAL. STATE V. WILDS, 508 SE 2d 257, JOHNSON V.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

DARNELL HUDSON,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2013-CP-23-00993

DECEMBER 19, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

DARNELL HUDSON, PRO SE

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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Exhibit List

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PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

Darnell Hudson -vs- State of South Carolina (2013-CP-23-00993)
Motion Hearing

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1 **DECEMBER 19, 2013**

2 (WHEREUPON, court convened with all parties
3 present and the following proceedings were had.)

4 THE COURT: Ms. Ratigan.

5 MS. RATIGAN: Thank you, Your Honor. May it
6 please the court. This is the case of Darnell East
7 Hudson versus the State of South Carolina. The docket
8 number is 2013-CP-23-0993. Mr. Hudson waived
9 presentment on charges of armed robbery and assault and
10 battery with intent to kill. October 26th of 1995, he
11 pled guilty to armed robbery and the lesser charge of
12 ABHAN. He received YOA sentences not to exceed six
13 years on the armed robbery and not to exceed six years,
14 suspended to probation, on the ABHAN.

15 He filed this PCR on February 19th of this year.
16 The state filed a return motion to dismiss dated August
17 5th of this year arguing that the PCR is clearly
18 untimely as Mr. Hudson pled guilty in 1995. I
19 submitted a conditional order of dismissal to Judge
20 Hill as the administrative judge. He signed that
21 conditional order. It was filed through the Clerk of
22 Court's Office August 21st of 2013. It was personally
23 served upon Mr. Hudson September 18th of 2013. Mr.
24 Hudson filed a response as requested at the end of that
25 conditional order. He filed a response dated September

1 12th of 2013. I received an email from Judge Hill's
2 law clerk on September 30th of 2013 to set the state's
3 motion to dismiss board hearing, which I have clearly
4 done, Your Honor.

5 The state would reassert the original argument in
6 their motion to dismiss, which is the application is
7 clearly untimely by -- my math is not so good -- but
8 it's about seventeen years too late. Mr. Hudson could
9 have raised any of the issues that he raises in his
10 application. He raises issues of after-discovered
11 evidence, involuntary guilty plea. He could have
12 raised all of this subsequent to 2013. He's clearly
13 maxed out these charges long, long ago. He's currently
14 incarcerated on charges, I believe, in Anderson County.

15 So we would argue that the entire matter should be
16 dismissed because it's untimely and Mr. Hudson does not
17 have counsel, so he'll be arguing for himself today.

18 THE COURT: All right. Mr. Hudson, be glad
19 to hear from you.

20 MR. HUDSON: Hey, how you doing? All right.

21 Your Honor, I filed upon this Court of Common
22 Pleas an application for Post Conviction Relief on the
23 date of February 19th of 2013 pursuant to South
24 Carolina Rules of Criminal Procedure, Rule 29(b), which
25 is a motion for a new trial based upon newly after-

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1 discovered evidence. In my PCR application and Rule
2 29(b) motion, which is attached to my PCR application,
3 I stated that I'm entitled to have my 1995 conviction
4 for armed robbery and assault and battery with a high
5 and aggravated nature reversed and remanded back to the
6 Court of General Sessions for a new trial. The reason
7 I seek to have these convictions reversed is because
8 there exists evidence of material fact not previous
9 presented and heard as required a vacation of the
10 convictions in the interest of justice, which I admit
11 that I had discovered newly after-discovered evidence
12 on the date of January 23rd of 2013 that Mr. Hashawsan
13 K. Brown had shot himself in his head in an attempt to
14 commit suicide on the date of November 22 -- 27th, 1993
15 and afterwards suffered from brain damage defects which
16 was caused by the gunshot wound to his head.

17 I learned of this information by talking to a
18 friend from Greenville County which knows of Mr. Brown.
19 His name is Jerman Barton. The statement -- Mr. Brown
20 is the alleged victim of an armed robbery and assault
21 that supposedly took place on March 13, 1995 here in
22 Greenville County. On March 13th of 1995, the victim
23 reported to the Greenville City Police Department that
24 he was arm robbed and assaulted by two black unknown
25 male individuals. The victim was shown a photo lineup

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1 and supposedly identified me as the arm robber and
2 assaulter. Followed by that identification and his
3 statement against me, the police obtained a warrant for
4 my arrest. Approximately two days after the Greenville
5 County Police Department searched my child's mother
6 apartment, they found no evidence to link me to this
7 crime, but arrested me and charged me with one count of
8 armed robbery and one count of assault and battery with
9 intent to kill.

10 Mr. Brown was the essence of the state's case. He
11 was the one that made these allegations against me.
12 After I was charged with them two charges, attorney Hal
13 Roach was appointed to represent me on them charges.
14 He came to the Greenville County Detention Center and
15 consulted with me, which I told attorney Hal Roach that
16 I was innocent of the charges. Mr. Roach told me that
17 the victim wrote a statement against me and picked me
18 out of a photo lineup, and that evidence was enough to
19 find me guilty by a jury. And if I was found guilty by
20 a jury, the judge could sentence me up to thirty years
21 for the armed robbery charge and up to twenty years for
22 the assault and battery with intent to kill.

23 I told -- he told me that he could get me a YOA
24 and some probation if I thought about accepting a
25 guilty plea. I thought about the thirty years, plus

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1 the twenty years, and told him I would plead to the YOA
2 and probation just to get home to my loved ones.

3 On the date of October 26th, 1995, which was ten
4 days after Mr. Roach was appointed to represent me, Mr.
5 Roach took me in front of a Judge Westbrook at a guilty
6 plea hearing. At the plea hearing, the judge asked me
7 how I pled and I told him not guilty. The judge told
8 me that since I pled not guilty he had to inform me of
9 my right to a jury. Once he went over them rights, he
10 informed me to the minimum and maximum sentences that
11 could be imposed upon me if I'm found guilty. I then
12 withdrew my plea of not guilty and then pled guilty to
13 them charges. He sentenced me to a YOA, one to six
14 year sentence and five years probation for the assault
15 and battery with high and aggravated nature. I then
16 signed the sentencing sheets and waiver form.

17 At no time prior to this guilty plea hearing did
18 the prosecution disclose to my counsel that the victim
19 had shot himself in the head fourteen months prior to
20 these allegations he made against me. In my PCR
21 application, I stated that the prosecution failed to
22 disclose favorable evidence to me and my trial counsel
23 and that the victim had shot himself in the head in an
24 attempt to commit suicide on the date of November 27,
25 1993.

1 The evidence of the victim's suicide attempt is
2 exculpatory evidence which they knew or should have
3 known. That evidence could have produced an acquittal
4 of them charges if the trial court would have found the
5 victim incompetent to stand trial against me and
6 testify against me. If he couldn't testify against me,
7 his statement and identification had to be suppressed
8 due to his incompetence would conclude that the
9 evidence -- due to his incompetence would exclude that
10 the evidence is a reasonable probability, the outcome
11 could have been different.

12 In my PCR application, I alleged that the state
13 prosecution violated South Carolina Rules of Criminal
14 Procedure Rule 5 disclosure when it failed to disclose
15 exculpatory evidence which would render my guilty plea
16 involuntary due to the prosecution withholding that
17 favorable evidence. Had I would have known of that
18 exculpatory evidence, I would have never pled guilty to
19 them charges. I would have stood trial.

20 Due to the *Brady* violation, my sixth amendment and
21 my fourteenth amendment of the United States
22 constitutional rights and Article One Section Three was
23 violated because I was denied the right to
24 confrontation, which I did have a right to confront
25 that victim at a competency hearing to attest his

1 competence to testify against me.

2 Also, I was denied the right to the effective
3 assistance of counsel, which the holding of that
4 exculpatory evidence by the prosecution did render my
5 attorney ineffective because it denied him the
6 opportunity to test the prosecution's allegations to
7 the fullest, and that would have been to test the
8 victim's competence and challenging the statement and
9 identification against me. That *Brady* violation was
10 critical and denied me to a fair trial. And what
11 prejudices me is what -- is the information I'm
12 presenting to you today, which the prosecution had
13 withheld.

14 All right. Once I filed my PCR application, she
15 did file a return. In her return, the respondent
16 sought summary dismissal on my post conviction relief
17 application and its entirety due to the statute of
18 limitations outlined in *Peloquin versus State*, case
19 number 321 S.C. 468 and 469 S.E.2d 606, 1996. To
20 support their defense, they cite South Carolina Code
21 annotated, 17-27-45(a), which reads as follows: An
22 application for relief filed pursuant to this chapter
23 must be filed within one year after they enter the
24 judgment of the conviction or within one year after the
25 sending of the remittitur to the lower court from an

1 appeal or the filing of the final decision upon appeal,
2 whichever is later. The respondent argued that my PCR
3 application was filed several years after the statutory
4 filing period had expired. And additionally, the
5 respondent argued that a motion for summary judgment
6 may properly be used to raise the defense of the
7 statute of limitations, citing *McDonald versus*
8 *Consolidated School District of Aiken*, case number 445
9 S.E.2nd 638, 1994. The respondent states that pursuant
10 to South Carolina Code annotated 17-27-70(c), 2013,
11 authorized the court to grant a motion by either party
12 for summary disposition of an application when it
13 appears from a plea and that there is no genuine issue
14 of material fact and the moving party is entitled to a
15 judgment as a matter of law. The respondent seeks
16 summary judgment citing *McDonald versus Consolidated*
17 *School District of Aiken* to support their defense and
18 motion to dismiss my PCR application.

19 Additionally, Your Honor, the respondent argued
20 that my obtaining newly after-discovered evidence is
21 without merit. The respondent states that for me to be
22 granted a new trial based on newly after-discovered
23 evidence, I must show that evidence is (1) such that it
24 would probably change the result if a new trial is
25 granted; (2) that the evidence has been discovered

Darnell Hudson -vs- State of South Carolina (2013-CP-23-00993)
Motion Hearing

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1 since trial; (3) that the evidence could not in
2 exercising due diligence had been discovered prior to
3 trial; (4) that the evidence is material to the issue
4 of guilt or innocence; and (5) the evidence is not
5 merely cumulative or impeaching. These requirements is
6 in *State versus Spann*.

7 The respondent argued that I have failed to
8 articulate the exact nature of the newly after-
9 discovered evidence in my PCR application. That I have
10 not shown that the allegation alleged -- that I have
11 not shown that the alleged evidence meets any of the
12 requirements for after-discovery evidence, and mostly
13 important that the new evidence offered by me is not
14 material to the issue of guilt or innocence and
15 probably will not change the result if a new trial was
16 had. The respondent states that the court should
17 summarily dismiss my allegations. However, the
18 respondent stated that the credibility of newly
19 discovered evidence is for the trial court to
20 determine, citing *State versus Harris*, case number 391
21 S.C. 539, and the second case number is 706 S.E.2d 526.

22 All right. In my PCR application, this is my PCR
23 application right here, it was filed -- this is the
24 case number, in the Court of Common Pleas, my name,
25 versus the State of South Carolina, case number 2013-

1 CP-23-00993, application for Post Conviction Relief.

2 Number ten, state concisely the grounds on which
3 you base your allegation that you are you are being
4 held in custody unlawfully. (a) newly after-discovered
5 evidence. Prosecution failed to disclose favorable
6 evidence. Involuntary guilty plea; see attachment to
7 support claims. Eleven, the state -- I cannot
8 pronounce that word, c-o-n-c-i-s-e-l-y, that's the
9 word.

10 THE COURT: Concisely.

11 MR. HUDSON: Concisely. All right. ... in
12 the same order the facts which support these grounds
13 set out in (10). *Clark versus State, Gibson versus*
14 *State, Sanchez versus United -- U.S.* I adopted those
15 cases supporting my allegations.

16 All right. In my attachment to my PCR is an
17 attachment to PCR application notice of a hearing for a
18 motion for new trial pursuant to South Carolina Rules
19 of Criminal Procedure, Rule 29(b), with attached
20 affidavit and incorporated memorandum allowed to
21 support the claim. I go through my claims, but first I
22 go through everything, which I won't put it on the
23 record.

24 I, Darnell Hudson, hereby inform this court by PCR
25 application and attached motion pursuant to the South

Darnell Hudson -vs- State of South Carolina (2013-CP-23-00993)
Motion Hearing

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1 Carolina Rules of Criminal Procedure, Rule 29(b),
2 incorporated by a memorandum of law to support claim
3 with attached affidavit by applicant to show this court
4 a prima facie showing that a new trial is warranted due
5 to newly after-discovered evidence that the prosecution
6 committed a Brady violation, Brady violation Rule 5
7 disclosure violation would rendered my guilty plea
8 involuntary violating applicant's due process right
9 under the fourteenth amendment of the United States
10 Constitution. This court of Greenville County, Court
11 of Common Pleas, has jurisdiction to hear applicant PCR
12 application and motion for a new trial based upon newly
13 after-discovered evidence. I go into the ---

14 THE COURT: Yes, sir. I've got your
15 paperwork.

16 MR. HUDSON: Okay. I'm ---

17 THE COURT: I've got it here. It's part of
18 the file.

19 MR. HUDSON: Okay. I can skip all that.
20 Okay. I'll go to the procedural history, which you
21 already ---

22 THE COURT: I've got that, too.

23 MR. HUDSON: Okay. These are my allegations.
24 Issue one, Brady violation. Okay.

25 MS. RATIGAN: Your Honor, I understand that

1 all of this is set out in Mr. Hudson's attachments and
2 he also filed a response, which should be in the
3 court's file in front of you.

4 MR. HUDSON: You got that?

5 THE COURT: Yeah, I've got it.

6 MR. HUDSON: Okay. Okay.

7 MS. RATIGAN: And so the state would simply
8 argue all this information is before Your Honor, but
9 Mr. Hudson has yet to ---

10 THE COURT: I can read it.

11 MR. HUDSON: Okay. This is ---

12 THE COURT: You've got your issue one and the
13 Brady violation.

14 MR. HUDSON: Okay.

15 THE COURT: It's all spelled out. I can
16 certainly review that.

17 MR. HUDSON: Okay. If you can go to the
18 conditional order, all right, not to -- my response,
19 have you got a copy of my response?

20 THE COURT: Yes, sir.

21 MR. HUDSON: Okay. Would you go to page --
22 would you turn to page -- it's right here, okay --

23 it'll be page twelve. I don't think there's numbers,
24 so you're going to have to work with me.

25 THE COURT: All right, sir.

1 MR. HUDSON: All right. I'm going to start
2 out, when a moving party properly supports its motion
3 showing that it is entitled to a judgment as a matter
4 of law, the party opposing the motion must present
5 affirmative evidence to establish a genuine dispute of
6 material fact which is necessary to defeat a summary
7 judgment motion. I state these cases.

8 All right. Thus in determining whether to grant
9 summary judgment, a court must review the evidence and
10 all reasonable inferences therefrom in the light most
11 favorable to the non-moving party. I state another
12 case, *Byrd versus City of Hartsville*.

13 THE COURT: Yes, sir. I'm reading that. I
14 see what you're saying.

15 MR. HUDSON: Okay. So ---

16 THE COURT: Do you need to read it to me or
17 can I read it? Do you want to read it all to me or do
18 you want me to read it myself.

19 MR. HUDSON: We can work together.

20 THE COURT: Well, it might help me if I read
21 it back so I'll have the law books ---

22 MR. HUDSON: Okay.

23 THE COURT: --- and can study it. But if you
24 feel like you need to read it to me because I don't
25 understand what you're saying, then ---

1 MR. HUDSON: This is my dispute, Your Honor.

2 She say statute of limitations don't apply to -- saying
3 that statute of limitation. Under 17-27-45(c) under
4 the newly discovered evidence, I'm entitled to ---

5 THE COURT: I'm familiar with the law. I'm
6 going to decide whether or not that meets it and
7 whether or not you're entitled to relief.

8 MR. HUDSON: Okay. Which these claims, I
9 want to state this for the record, Your Honor, I could
10 not raise this in a prior PCR application when I lacked
11 knowledge of the dude shooting himself in the head in
12 an attempt to commit suicide.

13 THE COURT: And you got that information in
14 January of this year, you say?

15 MR. HUDSON: Yes, sir.

16 THE COURT: And that was a letter from some
17 ---

18 MR. HUDSON: No. This is talking to an
19 actual individual that knows the victim himself.

20 THE COURT: Is the victim still alive or is
21 he ---

22 MR. HUDSON: Yes. And I would like to have
23 him at court.

24 THE COURT: Okay.

25 MR. HUDSON: He wrote an affidavit, if you

Darnell Hudson -vs- State of South Carolina (2013-CP-23-00993)
Motion Hearing

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1 got the paperwork, I've got several affidavits that I
2 submitted that he did write an affidavit. That's why I
3 need an attorney and I'm asking would you appoint me to
4 counsel and further continue this situation, because
5 ---

6 THE COURT: Well, certainly if I grant your
7 relief you'll have legal counsel.

8 MR. HUDSON: Yeah, because ---

9 THE COURT: I'll need to study. You've given
10 me a lot of law to review and I'm going to do that.
11 I'll make a ruling on it.

12 MR. HUDSON: These are serious allegations,
13 Your Honor. We're talking about a man that shot his
14 self in the head, see what I mean.

15 THE COURT: And the state knew that, you
16 believe?

17 MR. HUDSON: Yeah. If they didn't, they
18 should have known because this was the key witness.
19 Without him there's nothing else. He wrote a statement
20 against me and identified me. So therefore ---

21 THE COURT: So you believe the state should
22 have inquired about his medical records and so forth?

23 MR. HUDSON: Right. You know what I mean?
24 And disclosed that to my lawyer.

25 THE COURT: All right. I'll study this and

1 try to issue an order in -- well, we've got the
2 holidays. I'll try to do it in the next month or so.

3 MR. HUDSON: Okay. I've got some more
4 situations.

5 THE COURT: Well, aren't all your situations
6 in your paperwork?

7 MR. HUDSON: Yes and no.

8 THE COURT: Well, what is not in your
9 paperwork? Why didn't you put it in your paperwork?

10 MR. HUDSON: My witness I had -- my
11 grandmother, she wrote affidavits because she helped me
12 locate this victim.

13 THE COURT: Okay. Well, you can submit that
14 if you want to now or if you want to send it to the
15 court, I'll ---

16 MR. HUDSON: She died, Your Honor.

17 THE COURT: Okay. Well, if you want to
18 submit the affidavit, the state may object to it, but
19 I'll certainly look at it.

20 MR. HUDSON: All right. And I want to amend
21 my PCR application to allege a lack of subject matter
22 jurisdiction.

23 THE COURT: Allege what?

24 MR. HUDSON: A lack of subject matter
25 jurisdiction ---

Darnell Hudson -vs- State of South Carolina (2013-CP-23-00993)
Motion Hearing

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1 THE COURT: So there's no subject matter
2 jurisdiction for your PCR?

3 MR. HUDSON: No. On the conviction itself.

4 THE COURT: Oh, okay.

5 MR. HUDSON: That the trial court lacked
6 subject matter jurisdiction to impose the conviction
7 and the sentencing.

8 THE COURT: So the state didn't have the
9 authorization to try you even? Where should it have
10 been tried, do you think?

11 MR. HUDSON: Huh?

12 THE COURT: Where should the case have been
13 -- what jurisdiction should there have been?

14 MR. HUDSON: There shouldn't have been no
15 indictment.

16 THE COURT: There shouldn't have been an
17 indictment?

18 MR. HUDSON: No. There shouldn't have been
19 no indictment because the state had ninety days to file
20 ---

21 THE COURT: Okay. Didn't file timely?

22 MR. HUDSON: --- in time. And not only that,
23 when I went to that 1995 guilty plea, that judge never
24 informed me on the record to anything about a waiver of
25 presentment of indictment, which I feel like he should

1 have informed me. When he told me jury trial, I would
2 -- when he said jury trial, I was thinking the twelve
3 in the box. And when he got to that waiver of
4 presentment form, on that waiver, it said grand jury, I
5 never knowed the difference between a grand jury and a
6 jury trial.

7 THE COURT: Okay.

8 MR. HUDSON: He should informed me of the
9 rights. This is your right to a jury trial, which he
10 did, but he never informed me on the record, this is
11 your right pertaining to have this indictment presented
12 in front of that grand jury.

13 THE COURT: All right. Well, I can study
14 that, too, as far as what -- you did your time on this
15 charge, I guess?

16 MR. HUDSON: Yes.

17 THE COURT: All right. Okay. I'll ---

18 MS. RATIGAN: I would just note that the
19 affidavit Mr. Hudson is referring to is from Ms.
20 Fairfax and it's attached to his response to ---

21 THE COURT: Okay. So it's already in the
22 file, your grandmother's affidavit. I'm sorry she
23 passed away. I'll study this over and issue an order.

24 Thank you.

25 MS. RATIGAN: Thank you, Your Honor.

Darnell Hudson -vs- State of South Carolina (2013-CP-23-00993)
Motion Hearing

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1

2

[END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Thirteenth Judicial Circuit of
4 the State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of Common Pleas for
9 Greenville County, South Carolina, on the 19th day of
10 December, 2013.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15 July 18, 2014

16

17

18



Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	2013-CP-23-0993
COUNTY OF GREENVILLE	)	
	)	
Darnell East Hudson,	)	
S.C.D.C. No. 227328,	)	
	)	
Applicant,	)	ORDER OF DISMISSAL
	)	WITH PREJUDICE
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WOODWARD, JR.
2014 JAN 23 PM 3 11

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed February 19, 2013. The Respondent made its return and motion to dismiss on August 5, 2013.¹ A hearing was convened at the Greenville County Courthouse on December 19, 2013 at which time the Applicant was present in court and proceeded pro se. The Respondent was represented by Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General. At the hearing, the Respondent made a Motion to Dismiss based upon the expiration of the statute of limitations.

I. PROCEDURAL BACKGROUND

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant waived presentment to the Greenville County Grand Jury for armed robbery (1995-GS-23-6102) and assault and battery with intent to kill (1995-GS-23-6103). He was represented by Hal W. Roach, Esquire.

¹ The Honorable D. Garrison Hill, acting in his capacity as Chief Administrative Judge, signed a Conditional Order of Dismissal that was filed on August 21, 2013. Judge Hill subsequently set the State's motion to dismiss for a hearing.

[Handwritten signature]

Copy to App. A.E.

On October 26, 1995, the Applicant pled guilty to armed robbery and assault and battery of a high and aggravated nature (ABHAN). He was sentenced by the Honorable Marc Westbrook under the Youthful Offender Act to concurrent terms not to exceed six years for armed robbery and not to exceed six years suspended to five years probation for ABHAN. The Applicant did not appeal.

II. ALLEGATIONS

In his PCR application, the Applicant makes the following allegations in support of his claim for relief:

1. "Newly-after-discovered evid."
2. "Prosecution failed to disclose favorable evid."
 - a. Brady Violation.
3. "Involuntary guilty plea."

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the records of the Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the pleadings and makes the following findings of fact and conclusions of law:

A.

This Court finds the current PCR application should be dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The Applicant pled guilty to the offenses he challenges in this application on October 26, 1995. This application was filed on February 19, 2013, which was several years after the one-

² 

year statutory filing period had expired.

The statute of limitations contained in section 17-27-45(a) sets forth a bright-line test that must be followed by this Court in determining whether an application for PCR was filed in a timely manner. The Applicant has failed to set forth any cognizable reason that would justify disregarding this one-year statute of limitations. As such, all issues related to the Applicant's guilty plea hearing – except for that of a belated appeal – are summarily dismissed.

B.

The Applicant argued there was after-discovered evidence (that was also Brady² material) in his case. The Applicant argued that he discovered in January 2013 that the victim in this case had committed a prior suicide attempt in November of 1993. The Applicant argued that, as the crimes in this case occurred in March 1995, this was relevant because the victim had brain damage but still identified him in a photographic lineup. The Applicant argued that, if the State had known about the victim's prior suicide attempt, it should have been disclosed.

This Court finds the Applicant has failed to meet his burden of proving there is after-discovered evidence or a Brady violation in this case. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) ("The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence."). The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the alleged evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching.

² Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

³ *Ames*

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (citation omitted) (emphasis added). "A Brady claim is based upon the requirement of due process. Such a claim is complete if the accused can demonstrate (1) the evidence was favorable to the accused, (2) it was in the possession of or known to the prosecution, (3) it was suppressed by the prosecution, and (4) it was material to guilt or punishment." Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999) (emphasis added).

This Court finds the Applicant has not shown that the alleged evidence meets any of the requirements for proving either after-discovered evidence or a Brady violation. This Court finds the Applicant has not demonstrated an inability to have discovered this information (through due diligence) prior to the plea hearing. This Court finds the Applicant has not demonstrated this information is more than simply impeaching evidence. This Court finds the Applicant has not demonstrated that he would have gone to trial if he had been in possession of this information. See *id.* at 525, 514 S.E.2d at 325 ("A Brady violation is material when there is a reasonable probability that, but for the government's failure to disclose Brady evidence, the defendant would have refused to plead guilty and gone to trial."). This Court concludes the Applicant has not presented credible after-discovered evidence or demonstrated that this information was Brady material. See State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011) ("The credibility of newly-discovered evidence is for the trial court to determine.").

C.

The Applicant argued at the PCR hearing that the plea court lacked subject matter jurisdiction. The Applicant argued there was a violation of Rule 3(c), SCRCrimP and that no one explained the concept of waiving presentment.

This Court finds the Applicant has failed to meet his burden of proving the plea court lacked subject matter jurisdiction in his case. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174. This Court finds the Applicant's Rule 3(c), SCRCrimP argument is without merit. See State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984) ("[T]he failure of the solicitor to act upon a warrant within ninety (90) days . . . does not within itself invalidate a warrant or prevent subsequent prosecution."). Further, this Court finds the Applicant failed to provide evidence of any prejudice that resulted from the delay. See, e.g., State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (noting one must prove prejudice in order to prevail on an allegation that one's speedy trial rights were violated). This Court notes the Applicant signed the written waiver of presentment when he pled guilty. This Court finds the Applicant has not raised a valid subject matter jurisdiction claim.

IV. CONCLUSION

Based on the records, pleadings, the arguments of counsel, and evidence presented this Court finds the Applicant failed to file his PCR application within the time mandated by the Uniform Post-Conviction Procedure Act. This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure the appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

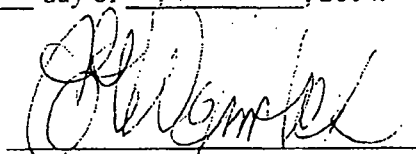
IT IS THEREFORE ORDERED THAT:

1. The Respondent's Motion to Dismiss is hereby **GRANTED** and the post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE**.
2. The Applicant is remanded to the custody of the Respondent for

5 

the completion of his sentence.

AND IT IS SO ORDERED this 22 day of Apr, 2014.



G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit



, South Carolina.

WITNESSES

J. T. Burgess

GPD

3/13/95

ARREST WARRANT NO. E 269637

ACTION OF GRAND JURY

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

95-GS-23
DOCKET NO.

6102

The State of South Carolina, ^{RM}

County of GREENVILLE

COURT OF GENERAL SESSIONS

OCTOBER TERM 1995

10-24-95

THE STATE

PLEAD GUILTY

vs.

DARNELL EAST HUDSON

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Hal Nach

1139 Indictment for Armed

Robbery and Robbery

VIOLATION § 16-11-330

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

INDICTMENT FOR ARMED ROBBERY

~~XXXXXXXXXX~~

At a Court of General Sessions, convened on _____
 the Grand Jurors of _____ County present upon their oath:

COUNT ONE — ARMED ROBBERY

That DARNELL EAST HUDSON did in
Greenville County on or about March 13, 1995, while armed with a deadly
 weapon, to wit: a gun
 _____ feloniously take from the person or presence of Hashawsan K. Brown by means of
 force or intimidation goods or monies of Hashawsan K. Brown such goods or monies being
 described as follows: Handbag, tapes, jewelry

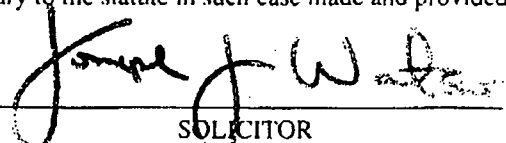
 with intent to deprive the owner permanently of such property.

~~XXXXXXXXXX~~ COUNT TWO — ROBBERY ~~XXXXXXXXXX~~

That _____ did in _____
 County on or about _____ feloniously take from the
 person or presence of _____ by means of
 force or intimidation goods or monies of _____
 such goods or monies being described as follows: _____

 with intent to deprive the owner permanently of such property.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

WITNESSES

J. T. Burgess

GPD

3/15/95

ARREST WARRANT NO. E 269636

ACTION OF GRAND JURY

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date:

95-GS-23
DOCKET NO.

RMA

The State of South Carolina,

County of GREENVILLE

COURT OF GENERAL SESSIONS

OCTOBER TERM 1995

10-26-95

PLEAD GUILTY
Abdullah

THE STATE

VS.

DARNELL EAST HUDSON

⁹¹⁴
Indictment for Assault and

Battery With Intent To Kill

and Possession of Firearm

or Knife During

Commission of or Attempt

to Commit Violent Crime

VIOLATION § 16-3-620

FORM 8 (12/87)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR ASSAULT AND
 BATTERY WITH INTENT TO KILL
 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

At a Court of General Sessions, convened on _____,
 the Grand Jurors of _____ County present upon their oath:

COUNT ONE — ASSAULT AND BATTERY WITH INTENT TO KILL

That DARNELL EAST HUDSON
 did in Greenville County on or about March 13, 1995, with
 malice aforethought commit an assault and battery upon one Hashawsan K. Brown
 _____ with intent to kill the said victim.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
 COUNT TWO POSSESSION OF FIREARM OR KNIFE DURING COMMISSION
 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
 OF OR ATTEMPT TO COMMIT A VIOLENT CRIME

That _____
 did in _____ County on or about _____, possess or
 visibly display a firearm or visibly display a knife during the commission or attempted commission
 of a violent crime, to wit: _____,
 in violation of Code Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and
 provided.

Joseph J. Watson
 SOLICITOR

IN THE SUPREME COURT OF SOUTH CAROLINA

COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY

COURT OF COMMON PLEAS

THE HON. G. EDWARD WELMAKER, CIR. CT. JUDGE

CASE NO: 2013-CP-23-0993

DARNEIL E. HUDSON # 227328 PETITIONER

V.

STATE OF SOUTH CAROLINA RESPONDENT

PETITION FOR WRIT OF CERTIORARI

PURSUANT TO RULES 227(C) AND 243

(C) OF THE S.C. APP. CT. RULES

OTHER COUNSEL FOR THE RECORD

MS. KAREN C. RATIGAN; ESQ. ATT GEN

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 11549

COLUMBIA S.C. 29211

DARNEIL E. HUDSON # 227328

LIEBER CORR INST

P.O. BOX 205

RIDGEVILLE S.C. 29472

PETITIONER DARNELL E. HUDSON # 227328, APPEALS THE ORDER OF DISMISSAL IN CASE NO: 2013-CP-23-0993, HUDSON V. STATE WHICH IS A P.C.R. ACTION TAKEN IN GREENVILLE COUNTY, COURT OF COMMON PLEAS. THE ORDER WAS ENTERED ON THE DATE OF JANUARY 22, 2014 BY THE HON. EDWARD WELMAKER, PRESIDING JUDGE FOR THE 13TH JUR. CIR OF GREENVILLE COUNTY, IN THE COURT OF COMMON PLEAS.

PETITIONER RECEIVED ORDER OF DISMISSAL ON THE DATE OF JANUARY 30TH 2014.

PURSUANT TO S.C. APP. CT. RULES 227 (C) AND 243 (C) PETITIONER TIMELY FILE THIS PETITION FOR WRIT OF CERTIORARI AND PROVIDE THIS COURT WITH AN SUFFICIENT EXPLANATION AS TO WHY THE P.C.R. COURT ACTIONS AND DETERMINATIONS WAS IMPROPER WHICH IS CONTROLLED BY ERR OF LAW. PETITIONER SEEKS WRIT OF CERTIORARI AND MOVES UPON THIS COURT TO REVERSE THE HON. G. EDWARD WELMAKER ORDER OF DISMISSAL IN HUDSON V. STATE, P.C.R. APPLICATION NO: 2013-CP-23-0993.

PETITIONER CLAIMS HE'S ENTITLED TO THE GRANT OF WRIT OF CERTIORARI AND REVERSAL OF ORDER DUE TO THE FOLLOWING GROUNDS PRESENTED BELOW.

ISSUES PRESENTED

- 1). DID THE P.C.R. COURT ABUSE ITS DISCRETION IN DENYING PETITIONER OF HIS STATUTORY RIGHT TO APPOINTMENT OF COUNSEL PURSUANT TO S.C.R. CIV. PRO. RULE 71.1 (D) WHEN PETITIONER WAS GRANTED AN HEARING CONCERNING WHETHER S.C. CODE ANN § 17-27-45 (A) ONE YEAR STATUTE OF LIMITATION APPLY TO THE RESPONDENTS MOTION TO DISMISS PETITIONER'S S.C.R. CRIM. P. RULE 29 (B) MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER DISCOVERED EVIDENCE MOTION?
- 2). DID THE P.C.R. COURT ERRED IN FAILING TO HOLD AN ON THE RECORD HEARING CONCERNING WHETHER PETITIONER KNOWINGLY, VOLUNTARY AND INTELLIGENTLY WAIVED HIS STATUTORY RIGHT TO APPOINTMENT OF COUNSEL PURSUANT TO S.C.R. CIV. PRO. RULE 71.1 (D)?
- 3). DID THE P.C.R. COURT ERRED IN FAILING TO GRANT PETITIONER AN P.C.R. EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL PURSUANT TO S.C.R. CRIM. P. RULE 29 (B) MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER DISCOVERED EVIDENCE MOTION?

5). PROCEDURAL HISTORY

PETITIONER IS CONFINED IN THE SOUTH CAROLINA DEPT OF CORR. PURSUANT TO ORDERS OF COMMITMENT OF THE CLERK OF COURT FOR GREENVILLE COUNTY. PETITIONER WAIVED PRESENTMENT TO THE GREENVILLE COUNTY GRAND JURY FOR ARMED ROBBERY (1995-GS-23-6102) AND FOR ASSAULT AND BATTERY WITH THE INTENT TO KILL (1995-GS-23-6103) WHICH WAS REPRESENTED BY MR. HAI W. ROACH, ESQ. ON OCTOBER 26 1995. THE PETITIONER PLED GUILTY TO THE ARMED ROBBERY AND ASSAULT AND BATTERY OF AN HIGH AND AGGRAVATED NATURE (ABHAN). HE WAS SENTENCED BY THE HON. MARC WESTBROOK UNDER THE YOUTHOFF OFFENDER ACT TO CONCURRENT TERMS NOT TO EXCEED SIX YEARS SUSPENDED TO FIVE YEARS PROBATION FOR (ABHAN). PETITIONER DID NOT APPEAL.

ON THE DATE OF FEBRUARY 19, 2013 PETITIONER FILED UPON THE COURT OF COMMON PLEAS FOR GREENVILLE COUNTY AN MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER DISCOVERED EVIDENCE PURSUANT TO S.C.R. CRIM P. RULE 29 (B).

PETITIONER MADE THE FOLLOWING ALLEGATIONS TO SUPPORT HIS CLAIM FOR RELIEF:

- 1). NEWLY-AFTER DISCOVERED EVID.
 - (A) PROSECUTION FAILED TO DISCLOSE FAVORABLE EVIDENCE.

VIOLATING S.C.R. CRIM. P. RULE 5 BRADY DISCLOSURE

2). INVOLUNTARY GUILTY PLEA

THE RESPONDENT MADE ITS RETURN AND MOTION TO DISMISS
ON 8-15-2013.

PETITIONER WAS SERVED WITH A CONDITIONAL ORDER OF
DISMISSAL ON 8-21-2013 WHICH GRANTED HIM 20
DAYS TO RESPOND TO THE RESPONDENTS MOTION TO DISMISS.

PETITIONER FILED AN TIMELY RESPONSE TO THE RESPONDENTS
CONDITIONAL ORDER OF DISMISSAL ON THE DATE OF
2013. INCLUDED WAS EXHIBITS PRESENTED UPON THE COURT
TO SUPPORT HIS ENTITLEMENT TO AN EVIDENTIARY HEARING AND
APPOINTMENT OF COUNSEL.

ON AUGUST 21, 2013 THE HON D. GARRISON HILL ACTING IN HIS
CAPACITY AS CHIEF ADMINISTRATIVE JUDGE SET THE STATE'S
MOTION TO DISMISS FOR A HEARING.

ON DECEMBER 19, 2013 AN HEARING WAS HEID AT THE GREENWICH
COUNTY COURTHOUSE, IN THE COURT OF COMMON PLEAS.

PETITIONER WAS PRESENT AND ACTED PRO SE.

THE RESPONDENT WAS REPRESENTED BY MS. KAREN C. RATIGAN ESQ. FOR THE SOUTH CAROLINA ATTORNEY GENERAL OFFICE.

ARGUMENTS

1.

THE P.C.R. COURT ABUSED HIS DISCRETION IN DENYING PETITIONER OF HIS STATUTORY RIGHT TO APPOINTMENT OF P.C.R. COUNSEL PURSUANT TO S.C.R. CIV. P. RULE 71.1 (D). WHEN PETITIONER WAS GRANTED AN HEARING CONCERNING WHETHER S.C. CODE ANN § 17-27-45 (A) ONE YEAR STATUTE OF LIMITATION APPLIED TO THE RESPONDENTS MOTION TO DISMISS PETITIONER'S S.C.R. CRIM P. RULE 29 (B) MOTION FOR NEW TRIAL BASED UPON NEWLY AFTER DISCOVERED EVIDENCE MOTION.

PETITIONER WAS CALLED TO AN HEARING ON THE DATE OF DECEMBER 19, 2013 AT THE GREENVILLE COUNTY COURTHOUSE WHICH WAS SET BY THE HON. D. GARRISON HILL ON AUGUST 21, 2013 CONCERNING THE RESPONDENT'S MOTION TO DISMISS PETITIONER'S P.C.R. APPLICATION PURSUANT TO S.C. CODE ANN § 17-27-45 (A) ONE YEAR STATUTE OF LIMITATION. THE HON. D. GARRISON HILL FAILED TO APPOINT P.C.R. COUNSEL IN THAT MATTER PURSUANT TO S.C.R. CIV. P. RULE 71.1 (D).

AT THE HEARING MS. KAREN C. RATIGAN ESQ. FOR THE RESPONDENT TESTIFIED THAT UNDER S.C. CODE ANN § 17-27-45 (A) THE ONE

YEAR STATUTE OF LIMITATION APPLY TO THE RESPONDENT AND MOVED UPON THE HON. WELMAKER TO DISMISS PETITIONER'S P.C.R. APPLICATION AS BEING UNTIMELY FILED. THE RESPONDENT SOLELY CLAIM AT THE HEARING WAS PURSUANT TO S.C. CODE ANN §17-27-45 (A) WHICH READS AS FOLLOWS: AN APPLICATION FOR RELIEF FILED PURSUANT TO THIS CHAPTER MUST BE FILED WITHIN ONE YEAR AFTER THE ENTRY OF A JUDGMENT OF CONVICTION OR WITHIN ONE YEAR AFTER THE SENDING OF THE REMITTITUR TO THE LOWER COURT FROM AN APPEAL OR THE FILING OF THE FINAL DECISION UPON AN APPEAL, WHICHEVER IS LATER.

PETITIONER TESTIFIED TO THE FOLLOWINGS ON THE RECORD.

- 1). HE DISCOVERED NEWLY AFTER DISCOVERED EVIDENCE ON THE DATE OF JANUARY 23, 2013 THAT THE STATE WITNESS MR. HASHAUNSAN K. BROWN HAD SHOT HIMSELF IN HIS HEAD ON NOVEMBER 27, 1993 IN AN ATTEMPT TO COMMIT SUICIDE WHICH CAUSED THE VICTIM BRAIN DAMAGE DEFECTS.
- 2). THAT THE EVIDENCE HE DISCOVERED WAS FAVORABLE TO HIM BECAUSE HE COULD CHALLENGE THE STATE'S WITNESS COMPETENCY TO STAND TRIAL AND TESTIFY AGAINST HIM.
- 3). THAT THE PROSECUTION HAD NO EVIDENCE TO LINK HIM TO THE CHARGES BUT ONLY THE VICTIM'S IDENTIFICATION AND STATEMENT WHICH HE GAVE TO THE POLICE AGAINST HIM.
- 4). THAT THE NEWLY AFTER DISCOVERED EVIDENCE WAS EXCULPATORY EVIDENCE BECAUSE THE VICTIM IS INCOMPETENT DUE TO THE BRAIN DAMAGE WHICH AFFECTED HIS MEMORY.

- 5). THAT THE PROSECUTION KNEW OF THE VICTIM SUICIDE ATTEMPT AND FAILED TO DISCLOSED THAT INFORMATION TO HIS ATTORNEY IN THE RULE 5 BRADY DISCLOSURE, OR IF THEY DID NOT KNOW THEY SHOULD HAVE KNOWN ABOUT THE VICTIM'S SUICIDE ATTEMPT THAT DAMAGED HIS BRAIN.
- 6). THAT HAD HE WOULD OF KNOWN OF THAT FAVORABLE EVIDENCE HE WOULD OF NEVER PLEAD GUILTY BUT WOULD OF STOOD TRIAL.
- 7). THAT IF HE WOULD OF STOOD TRIAL ITS A REASONABLE PROBABILITY THE OUTCOME WOULD OF BEEN ACQUITTAL BECAUSE THE VICTIM COULD NOT TESTIFY AGAINST HIM.
- 8). THAT THE VIOLATION OF BRADY VIOLATED HIS U.S. CONST. RIGHTS UNDER THE 5TH, 6TH AND 14TH AMENDMENTS.
- 9). THAT THE EVIDENCE HE DISCOVERED HE COULD NOT HAVE DISCOVERED THIS INFORMATION BECAUSE HE NOR HIS ATTORNEY NEVER KNOWN OF THE VICTIM AND THAT IT WAS NO WAY POSSIBLE TO HAVE LEARNED OF THIS INFORMATION OF THE VICTIM'S BRAIN DAMAGE DEFECTS BECAUSE HIS MEDICAL RECORDS IS CONFIDENTIAL.
- 10). THAT ON FEBRUARY 19, 2013 HE FILED A P.C.R. APPLICATION DUE TO THE NEWLY AFTER DISCOVERED EVIDENCE HE DISCOVERED.

PETITIONER REQUESTED UPON THE P.C.R. COURT FOR THE APPOINTMENT OF COUNSEL IN THAT MATTER AND THE HON WEIMAKER STATED TO PETITIONER YOU WILL GET ONE IF I GIVE YOU ONE.

STANDER OF REVIEW

THE P.C.R. COURT ABUSED HIS DISCRETION IN FAILING TO APPOINT P.C.R. COUNSEL TO ASSIST PETITIONER PURSUANT TO S.C.R. CIV. P. RULE 71.1 (D) CONCERNING WHETHER S.C. CODE ANN § 17-27-45 (A) APPLIED TO THE RESPONDENT'S MOTION TO DISMISS PETITIONER'S NEWLY AFTER DISCOVERED EVIDENCE MOTION PURSUANT TO S.C.R. CRIM. P. RULE 29 (B). THE VIOLATION OF THE P.C.R. COURT FAILURE TO APPOINT COUNSEL DENIED PETITIONER OF HIS STATUTORY RIGHT PURSUANT TO S.C.R. CIV. P. RULE 71.1 (D). WHICH READS AS FOLLOWS: APPOINTMENT OF COUNSEL FOR HEARING. IF, AFTER THE STATE HAS FILED ITS RETURN, THE APPLICATION PRESENT QUESTIONS OF LAW OR FACT WHICH WILL REQUIRE A HEARING, THE COURT SHALL PROMPTLY APPOINT COUNSEL TO ASSIST THE APPLICANT IF HE IS INDIGENT. COUNSEL SHALL BE GIVEN A REASONABLE TIME TO CONFER WITH THE APPLICANT. COUNSEL SHALL INSURE THAT ALL AVAILABLE GROUNDS FOR RELIEF ARE INCLUDED IN THE APPLICATION AND SHALL AMEND THE APPLICATION IF NECESSARY.

LAW ANALYSIS

UNDER 71.1(D) OF S.C.R. CIV. P. AN INDIGENT APPLICANT WHO IS GRANTED A HEARING HAS A STATUTORY RIGHT TO BE REPRESENTED BY A COURT-APPOINTED ATTORNEY AL-SHABAZZ V. STATE 338 S.C. 354, 527 SE 2d 742 (2000) CITING WHITEHEAD V. STATE 310 S.C. 532, 1462 SE 2d 315 (1992) THUS, IN GRAY V. STATE 557 SE 2d. 662 THE S.C. SUPREME COURT HAS REMAND THAT CASE BACK TO THE LOWER COURT FOR THE APPOINTMENT OF COUNSEL AND

AN EVIDENTIARY HEARING REGARDING PETITIONER'S CLAIM OF
EQUITABLE TOLLING OF THE ONE YEAR STATUTE OF LIMITATION.
THE SAME SITUATION FOUNDED IN GRAY V. STATE IS FOUNDED IN
THIS MATTER, PETITIONER NEVER KNOWINGLY, VOLUNTARY OR
INTELLIGENTLY WAIVED HIS RIGHT TO COUNSEL AND THERE'S NO ON
THE RECORD WAIVER TO SUBSTANTIATE ANY WAIVER. BRANNON
V. STATE 293 S.C. 528, 362 SE 2d 20. THE ABUSED OF
DISCRETION COMMITTED BY THE P.C.R. COURT PREJUDICE
PETITIONER DUE TO DENYING PETITIONER TO THE ASSISTANCE
OF COUNSEL TO SHOW THE COURT THAT PURSUANT TO S.C. CODE ANN
§ 17-27-45(C) PETITIONER'S APPLICATION IS TIMELY FILED.
COATS V. STATE. 575 SE 2d 557 (S.C. 2003)

CONCLUSION

WHEN THE P.C.R. COURT DECISION IS CONTROLLED BY ERR OF LAW
THIS COURT MUST REVERSE. PIERCE V. STATE 338 S.C. 139, 526
SE 2d. 222 (S.C. 2000). IN THE INTEREST OF JUSTICE AKIN
TO GRAY V. STATE 557 SE 2d 662 PETITIONER SEEK WRIT OF
CERTIORARI AND REQUEST UPON THIS COURT TO REVERSE THE P.C.R.
COURT ORDER OF DISMISSAL AND REMAND THE MATTER IN HUDSON
V. STATE BACK TO THE LOWER COURT FOR A NEW HEARING WITH
THE ASSISTANCE OF A COURT APPOINTED ATTORNEY.

THE P.C.R. COURT ERRED IN FAILING TO HOLD AN ON THE RECORD HEARING CONCERNING WHETHER PETITIONER KNOWINGLY, VOLUNTARY, AND INTELLIGENTLY WAIVED HIS STATUTORY RIGHT TO APPOINTMENT OF P.C.R. COUNSEL.

THE HON. WELMAKER NEVER QUESTIONED PETITIONER ON THE RECORD AT THE HEARING HELD ON DECEMBER 19, 2013 WHETHER PETITIONER KNOWINGLY, VOLUNTARY AND INTELLIGENTLY WAIVE HIS STATUTORY RIGHT TO THE ASSISTANCE OF P.C.R. COUNSEL PURSUANT TO S.C.R. CIV.P. RULE 71.1 (D). UNDER S.C.R. CIV.P. RULE 71.1 (D) APPOINTMENT OF COUNSEL FOR HEARINGS, READS AS FOLLOWS: IF, AFTER THE STATE HAS FILED ITS RETURN, THE APPLICATION PRESENT QUESTIONS OF LAW OR FACT WHICH WILL REQUIRE A HEARING, THE COURT SHALL PROMPTLY APPOINT COUNSEL TO ASSIST THE APPLICANT IF HE IS INDIGENT. COUNSEL SHALL BE GIVEN A REASONABLE TIME TO CONFER WITH THE APPLICANT. COUNSEL SHALL INSURE THAT ALL AVAILABLE GROUNDS FOR RELIEF ARE INCLUDED IN THE APPLICATION AND SHALL AMEND THE APPLICATION IF NECESSARY. UNDER THAT RULE, AN INDIGENT APPLICANT WHO IS GRANTED A HEARING HAS A STATUTORY RIGHT TO BE REPRESENTED BY A COURT-

APPOINTED ATTORNEY GRAY V. STATE 557 SE2d. 662. IN THIS MATTER, PETITIONER WAS GRANTED AN HEARING BY THE HON. D. GARRISON HILL CONCERNING THE RESPONDENT'S MOTION TO DISMISS PETITIONER'S P.C.R. APPLICATION DUE TO THE STATUTE OF LIMITATION PURSUANT TO S.C. CODE ANN § 17-27-45(A) WHICH THE SUPREME COURT HAS HELD IN GRAY V.

STATE 557 SE 2d 662 THAT A P.C.R. APPLICANT HAS THAT RIGHT TO ASSISTANCE OF COUNSEL WHEN THE STATE MOVES FOR SUMMARY DISMISSAL OF AN P.C.R. APPLICATION DUE TO THE STATUTE OF LIMITATION WHEN THERE IS A QUESTION OF LAW OR FACTS THAT CAN NOT BE REFUTED BY A RECORD. MCCOY V. STATE 401 S.C. 363, 737 SE2d 625 (2013).

STANDER OF REVIEW

PETITIONER WAS ENTITLED TO ASSISTANCE OF COUNSEL PURSUANT TO S.C.R. CIV. P. RULE 71.1 (D) GRAY SUPRA. THE P.C.R. COURT ERRED WHEN IT FAILED TO QUESTION PETITIONER ON THE RECORD WHETHER HE KNOWINGLY, VOLUNTARY, AND INTELLIGENTLY WAIVED THAT STATUTORY RIGHT. BRANNON V. STATE 293 S.C. 528, IN BRANNON, A APPLICANT'S KNOWINGLY AND VOLUNTARY WAIVER OF A STATUTORY OR CONSTITUTIONAL RIGHT MUST BE ESTABLISHED BY A COMPLETE RECORD BY THE COURT, THIS RECORD MAY BE ACCOMPLISHED BY COLLOQUY BETWEEN THE COURT AND THE APPLICANT, BETWEEN COURT AND APPLICANT'S COURT ATTORNEY OR BOTH. THE SUPREME COURT FOUNDED THAT BRANNON DID NOT KNOWINGLY, VOLUNTARY AND INTELLIGENTLY WAIVE HIS STATUTORY RIGHT TO A P.C.R. EVIDENTIARY HEARING ON THE RECORD AND REVERSED AND REMAND THAT PROCEEDING BACK TO THE LOWER COURT DUE TO THE P.C.R. COURT ERR. PIERCE V. STATE 338 S.C. 139, 526 SE 2d 222 (2000)

LAW ANALYSIS

PETITIONER NEVER KNOWINGLY, VOLUNTARY OR INTELLIGENTLY WAIVED HIS STATUTORY RIGHT TO P.C.R. COUNSEL AND THE RECORD IS SILENT GRAY SUPRA, BRANNON SUPRA. BY THE P.C.R. COURT ERR PETITIONER WAS PREJUDICE DUE TO BEING DENIED TO APPOINTMENT OF COUNSEL WHEN HE NEVER KNOWINGLY, VOLUNTARY OR INTELLIGENTLY WAIVED HIS RIGHT TO ASSISTANCE OF COUNSEL PURSUANT TO S.C.R. CIV. P. RULE 71.1 (D) TO CHALLENGE THE RESPONDENT'S MOTION TO DISMISS HIS P.C.R. APPLICATION DUE TO THE ONE YEAR STATUTE OF LIMITATION PURSUANT TO S.C. CODE ANN § 17-27-45 (A).

CONCLUSION

WHEN THE P.C.R. COURT DECISION IS CONTROLLED BY ERR OF LAW THIS COURT MUST REVERSE PIERCE SUPRA. PETITIONER SEEK WRIT OF CERTIORARI AND REQUEST UPON THIS COURT TO REVERSE AND REMAND THIS MATTER BACK TO THE LOWER COURT FOR A HEARING WITH THE APPOINTMENT OF P.C.R. COUNSEL.

3.

THE P.C.R. COURT ERRED IN FAILING TO GRANT PETITIONER AN P.C.R. EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL PURSUANT TO S.C.R. CRIM. P. RULE 29 (B) MOTION

FOR NEW TRIAL BASED UPON NEWLY AFTER DISCOVERED EVIDENCE MOTION.

PETITIONER FILED A P.C.R. APPLICATION ON THE DATE OF FEBRUARY 19, 2013 ALLEGING THAT HE DISCOVERED EXCULPATORY EVIDENCE ON THE DATE OF JANUARY 23, 2013 THAT THE STATE KEY WITNESS MR. HADHAWSAN K. BROWN DID ON NOVEMBER 27, 1993 HAD SHOT HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE WHICH CAUSED BRAIN DAMAGE DEFECTS TO THE WITNESS. THESE DEFECTS ARE LISTED IN EXHIBIT () WHICH WAS SUBMITTED TO THE P.C.R. COURT IN PETITIONER'S RESPONSE TO THE RESPONDENT'S MOTION TO DISMISS. IN PETITIONER'S RESPONSE TO THE RESPONDENT'S CONDITIONAL ORDER OF DISMISSAL, PETITIONER ALLEGED THE FOLLOWING LISTED BELOW THAT ENTITLED HIM TO AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL:

- 1). THAT HE DISCOVERED EXCULPATORY EVIDENCE WHICH WAS THE DISCOVERED OF THE VICTIM SUICIDAL ATTEMPT WHICH CAUSED BRAIN DAMAGE TO THE VICTIM'S BRAIN. SEE: EXHIBIT 8
- 2). THAT THE EVIDENCE COULD OF BEEN CHALLENGED AT A TRIAL UNDER S.C.R. EVID. RULE 601 (8). BECAUSE THE VICTIM IS INCOMPETENT TO STAND TRIAL AND TESTIFY AGAINST THE PETITIONER.
- 3). THAT THE EVIDENCE HE DISCOVERED FELL UNDER THE NEWLY

AFTER DISCOVERED EVIDENCE WHICH WAS THAT THE STATE PROSECUTION COMMITTED A S.C.R. CRIM. P. RULE 5 BRADY VIOLATION BECAUSE THEY KNEW OF THE VICTIM'S SUICIDE ATTEMPT AND FAILED TO DISCLOSED THAT INFORMATION TO PETITIONER'S ATTORNEY, OR THAT IF THEY DIDN'T KNOW OF THE VICTIM'S SUICIDE ATTEMPT THEY SHOULD HAVE KNOWN.

4). THAT THE VIOLATION OF BRADY VIOLATED HIS U.S. CONST. RIGHTS UNDER THE 5TH, 6TH AND 14TH AMENDMENTS.

5). THAT HIS 1995 GUILTY PLEA IS INVOLUNTARY BECAUSE OF THE BRADY VIOLATION.

6). THAT HAD HE WOULD OF KNOWN OF THE EXCULPATORY EVIDENCE THAT THE STATE PROSECUTION FAILED TO DISCLOSE HE WOULD OF NEVER PLEAD GUILTY TO THE CHARGES BUT WOULD OF INSISTED TO STAND TRIAL.

7). PETITIONER SUBMITTED EVIDENCE UPON THE P.C.R. COURT TO SUBSTANTIATE HIS ENTITLEMENT TO AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL SEE, ALL EXHIBITS ATTACH TO THE RESPONSE TO THE CONDITIONAL ORDER OF DISMISSAL. SEE EXHIBIT'S

8). THAT UNDER S.C. CODE ANN § 17-27-45 (C) HIS 'P.C.R. APPLICATION IS TIMELY FILED.

WITHIN THE P.C.R. APPLICATION AND IN PETITIONER'S RESPONSE TO THE RESPONDENT'S MOTION TO DISMISS THE PETITIONER PRESENTED CASE LAW TO SUPPORT HIS CLAIM TO AN EVIDENCE HEARING AND APPOINTMENT OF COUNSEL.

STANDER OF REVIEW

THE P.C.R. COURT ERRED WHEN IT DENIED PETITIONER OF HIS STATUTORY RIGHT PURSUANT TO S.C. CODE ANN §17-27-80 AND S.C.R. CIV. P. RULE 71.1 (E) TO AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL TO PROVE HIS ENTITLEMENT TO RELIEF. AT AN EVIDENTIARY HEARING, THE APPLICANT, AS THE MOVING PARTY, PRESENTS HIS EVIDENCE FIRST AND HAS THE BURDEN TO PROVE, BY THE PROPONDERANCE OF THE EVIDENCE THAT HE IS ENTITLED TO THE RELIEF SOUGHT IN THE APPLICATION, BANNISTER V. STATE 309 SE 2d 807, THUS THE EVIDENCE PRESENTED AT AN EVIDENTIARY HEARING MUST BE OF PROBATIVE VALUE MOOREHEAD V. STATE 496 SE 2d 415. THE ALLEGATIONS PRESENTED BY AN APPLICANT MUST BE MORE THEN MERE SPECULATIONS, TO ENTITIE AN APPLICANT TO RELIEF CHERRY V. STATE 386 SE 2d 624, THUS AS A PRIMARY MATTER, WHEN A APPLICANT PRESENT CLAIMS THAT HE IS ENTITLED TO RELIEF THE P.C.R. COURT MUST ASSUME FACTS PRESENTED BY THE APPLICANT ARE TRUE AND VIEW THOSE FACTS IN THE LIGHT MOST FAVORABLE TO THE APPLICANT. WILSON V. STATE 559 SE 2d 581. THE P.C.R. COURT IS ENTITLED TO DENY RELIEF WHEN A APPLICANT ONLY

FAILS TO ESTABLISH HIS ENTITLEMENT TO RELIEF BY THE PREPONDERANCE OF THE EVIDENCE. ROLLISON V. STATE 552 SE2d. 290, PALACIO V. STATE 511 SE 2d 62.

LAW ANALYSIS

IN REVIEWING PETITIONER'S ALLEGATIONS AND EVIDENCE PRESENTED IN HIS RESPONSE TO THE RESPONDENT'S MOTION TO DISMISS AN EVIDENTIARY HEARING WAS APPROPRIATE DUE TO THE APPLICANT RAISING A QUESTION OF MATERIAL FACT THAT ONLY CAN BE RESOLVED BY A HEARING WHICH IS MANDATED. MCCOY V. STATE 401 S.C. 363, 737 SE 2d 625 (2013), THESE ALLEGATIONS ALLEGED CAN NOT CONCLUSIVELY BE REFUTED BY A RECORD. SHAPER V. STATE 305 SE 2d 247. IN PETITIONER'S P.C.R. APPLICATION THE PETITIONER ALLEGED THAT HE DISCOVERED NEWLY AFTER DISCOVERED EVIDENCE THAT THE STATE WITNESS HAD SHOT HIMSELF IN HIS HEAD IN AN ATTEMPT TO COMMIT SUICIDE WHICH CAUSED BRAIN DAMAGE TO THE VICTIM'S BRAIN. SEE EXHIBIT (). THAT THE EVIDENCE IS EXCULPATORY STATE V. FORNEY 321 S.C. 353, 468 SE 2d 641. EXCULPATORY EVIDENCE IS THAT WHICH CREATES A REASONABLE DOUBT ABOUT A DEFENDANT'S GUILT. STATE V. SPANN 513 SE 2d 98, UNDER SPANN, IN ORDER FOR AN APPLICANT TO PREVAIL ON A NEW TRIAL HE MUST SHOW THAT THE NEWLY AFTER DISCOVERED EVIDENCE IS (1). SUCH THAT IT WOULD PROBABLY CHANGE THE RESULT IF A NEW TRIAL WERE GRANTED. (2). HAS BEEN DISCOVERED SINCE TRIAL (3). COULD NOT

IN THE EXERCISE OF DUE DILIGENCE HAVE BEEN DISCOVERED PRIOR TO TRIAL (4), IS MATERIAL AND (5), IS NOT MERELY CUMULATIVE OR IMPEACHING. IN PETITIONER'S RESPONSE HE SHOWED THE P.C.R. COURT THAT IF AN EVIDENTIARY HEARING WAS GRANTED HE COULD MEET THEM REQUIREMENTS, AND THAT UNDER BRADY V. MARYLAND 373 U.S. 83, 83 S. CT. 1194, HE COULD PREVAIL ON THE CLAIM BY SHOWING THE COURT (1) THE EVIDENCE WAS FAVORABLE TO HIM, (2). IT WAS IN THE POSSESSION OF OR KNOWN TO THE PROSECUTION, (3). IT WAS SUPPRESSED BY THE PROSECUTION, AND (4). IT WAS MATERIAL TO GUILT OR PUNISHMENT. THIS RULE ALSO APPLIES TO IMPEACHING EVIDENCE OR EXCULPATORY EVIDENCE, WHICH RENDER HIS GUILTY PLEA INVOLUNTARILY ENTER. GIBSON V. STATE 514 SE 2D 320, PETITIONER PRESENTED TO THE P.C.R. COURT IN HIS P.C.R. APPLICATION, RESPONSE TO THE RESPONDENT'S MOTION TO DISMISS AND AT THE HEARING HELD ON DECEMBER 19TH, 2013 THAT HAD HE WOULD OF KNOWN OF THAT EXCULPATORY EVIDENCE HE WOULD NOT HAVE PLEADED GUILTY TO THEM CHARGES, BUT WOULD HAVE STOOD TRIAL. GIBSON SUPRA. DUE TO THE ALLEGATIONS PRESENTED WITH THE EVIDENCE THE CREDIBILITY OF THE NEWLY AFTER DISCOVERED EVIDENCE IS ONLY FOR THE TRIAL COURT TO DETERMINE. STATE V. HARRIS 391 S.C. 539, JOHNSON V. CATOE 345 S.C. 389 (2001) STATE V. SPANN 513 SE 2D. 98 (1994). WHICH DENYING PETITIONER TO AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL WAS A ABUSE OF THE P.C.R. COURT DISCRETION. STATE V. EDENS 290 SE 2D 116. ESPECIALLY WHEN PETITIONER SHOWN THE P.C.R. COURT THAT UNDER S.C. CODE ANN §17-27-45 (C) HE WAS ENTITLED TO AN HEARING BECAUSE HE HAD JUST DISCOVERED THE NEWLY

AFTER DISCOVERED EVIDENCE AND THAT IT WAS NO WAY POSSIBLE THAT HIM NOR HIS TRIAL ATTORNEY COULD HAVE DISCOVERED THE EVIDENCE PRIOR TO THE PLEA HEARING BECAUSE 1), THE PROSECUTION WITHHELD THE LEAD TO THE EXCULPATORY EVIDENCE AND 2), THE VICTIM'S MEDICAL RECORDS ARE CONFIDENTIAL PURSUANT TO S.C. CODE ANN § 44-115-20, 44-44-80 AND 44-6-180 WHICH SHOWN THE P.C.R. COURT HIS MOTION FOR NEW TRIAL WAS TIMELY FILED. PURSUANT TO S.C. CODE ANN § 17-27-45 (C) COATS V. STATE 575 S.E. 2d 557 (S.C. 2003) THE P.C.R. COURT ERRED WHEN IT FAILED TO CONTINUE THE MATTER AND GRANT PETITIONER AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL. THIS VIOLATION DENIED PETITIONER TO THE CHANCE TO PROVE HIS ENTITLEMENT TO RELIEF PURSUANT TO S.C. CODE ANN § 17-27-80 BANNISTER SUPRA WHICH PREJUDICED PETITIONER.

CONCLUSION

PETITIONER SEEKS WRIT OF CERTIORARI DUE TO THE P.C.R. ERR. OF LAW AND REQUEST UPON THIS COURT TO REVERSE AND REMAND THIS MATTER BACK TO THE LOWER COURT FOR AN EVIDENTIARY HEARING AND APPOINTMENT OF COUNSEL. PIERCE SUPRA.

FOR THE PRECEDING REASONS, PETITIONER RESPECTFULLY ASK THIS COURT TO GRANT HIS PETITION FOR WRIT OF CERTIORARI.

FEBRUARY 28, 2014.

RESPECTFULLY SUBMITTED
DARNELL E HUDSON, PETITIONER

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
 PETITION FOR WRIT OF
CERTIORARI

CERTIORARI TO GREENVILLE
 COUNTY

THE HON. G EDWARD WILMAKER, CIR CT. JUDGE
 CASE NO.: 2013-CP-23-0993

DARNELL E. HUDSON, ... PETITIONER

v.

STATE OF SOUTH CAROLINA RESPONDENT

CERTIFICATE OF SERVICE

I CERTIFY THAT A TRUE COPY OF THE PETITION FOR WRIT OF
 CERTIORARI AND A COPY OF THE RECORDS IN THIS CASE HAVE
 BEEN SERVED ON MS. KAREN C. RATIGAN, ESQ, THIS 28TH DAY OF
 FEBRUARY, 2014.

DARNELL E. HUDSON

PETITIONER ACTING PRO SE

DEAR CLERK.

3-27-2014

PLEASE FIND ENCLOSED IS
APPELLANT'S TIMELY WRITTEN EXPLANATION
PURSUANT TO S.C. APP. CT. RULE 243(C)
IN CASE NO: 2014-000407 HUDSON V. STATE

PLEASE FORWARD ME A COPY
BACK STAMP-CLOCKED OR A LETTER
LETING ME KNOW THAT IT HAVE
BEEN TIMELY FILED.

THANK YOU FOR YOUR ASSISTANCE
IN THIS MATTER

DARVEN E HUDSON

RECEIVED

MAR 31 2014

S.C. SUPREME COURT