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Daniel E. Shearouse
P.O. Box 11330
Columbia, S.C. 29211

NOV 14 2014

S.C. SUPREME COURT

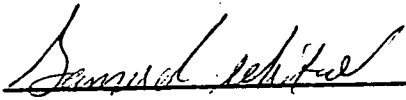
RE: SAMUEL WHITNER V. THE STATE C/A NO.: 2013-CP-23-00765

Dear Mr. Shearouse:

I'm writing with inquisition regarding an appeal; that which by a correspondence that was forwarded to me from the clerk of court, Paul B. Wickensimer, in which Mr. Wickensimer had informed me that an appeal had been filed by attorney Caroline M. Horlbeck whom which was appointed by the Court to represent me within P.C.R. However, according to an October 10, 2014 Correspondence from the Clerk of Court thus informing me that an appeal was filed on the 11th day of September 2014 (Exhibit A) that which the correspondence from Mr. Wickensimer was with regards to a correspondence that therein I had requested for a clock stamp copy of a Motion to Relieve which was consolidated with a preliminary injunction pursuant to 42(a) S.C.R.C.P. See Exhibit B.

A proposed order from either party has not been forwarded to me prior to or after if the Court had rendered an order of disposition concerning the matters within the above stated case. This obligation thus to inform me of a disposition prior and after a rendered court order, has been neglected per the Clerk of Court, Paul B. Wickensimer as well as the Assistant Attorney General Karen C. Ratigan and Attorney Esq. Caroline M. Horlbeck, a court rendered order of disposition had not been forwarded to me that concerns the pro se Motion to Relieve that is consolidated a preliminary injunction pursuant to 42(a) S.C.R.C.P. See Exhibit

B. This in general does so deprives me thus impeding on the right that which is entitled to me to justly exercise a corrective implement that is meritorious for interlocutory opposition upon equilibrium access of the Appellate Courts pursuant to S.C. Code Ann. §14-3-330; Moresoever, S.C. Constitution Artical 1 §3 guarantees me the right to appeal when an intermediate decision has been erroneously executed. However, the decision in not forwarding to me any disposition concerning all matters regarding an Appeal or my case is somewhat retributive towards me because of the matters that are encompassed within my pro se Motion to Relieve Counsel that is consolidated with an preliminary injunction. See Exhibit B. I am entitled to appeal by interlocutory concerning the matters within the pro se motion to relieve. It was unlawful for Esq. Caroline M. Horlbeck to file an appeal concerning any and all matter concerning my case.


Samuel L. Whitner #263066
B.R.C.I. Wat. 143
4460 Broad River Rd.
Columbia, S.C. 29210

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 24 DAY OF November 2014


Notary Public For South Carolina

MY COMMISSION EXPIRES: _____ My Commission Expires
March 6, 2018

(Exhibit A)



Office of the Clerk of Court

Paul B. Wickensimer
Clerk of Court for Greenville County
Greenville, South Carolina

www.greenvillecounty.org

October 10, 2014

Samuel Whitner 263066
Broad River Corr Instit
4460 Broad River Rd
Columbia SC 29210

Mr. Whitner,

A notice of appeal was filed in this case on 9/11/14 by your attorney Caroline Horlbeck.

Thank you for your attention in this matter.

GREENVILLE COUNTY CLERK OF COURT
CIVIL RECORDS

RECEIVED

NOV 14 2014

S.C. SUPREME COURT

(Exhibit A)


Paul B. Wickensimer
Greenville County Courthouse
305 East North Street
Greenville S.C. 29601-2485

RE: Paul B. Wickensimer

SAMUEL WHITNER V THE STATE


Case No.: 2013-CP-23-00765

On the date of July 31st 2014. I the Applicant had filed a pro se Motion to relieve counsel with consolidation pursuant to Rule 42 (a) SCRPC of a preliminary injunction but I have not been apprise by clerk of court; Paul B. Wickensimer, that this motion has been filed on docket. Enclosed is a copy of the motion with this correspondence I the Applicant respectfully request ~~when~~ that this motion be clocked stamped, and hold the date that this motion had been filed on docket which should be shortly after July 31 2014


SAMUEL LAMONT WHITNER #263066
B.R.C.I. WAT 143
4460 Broad River Rd
Columbia SC 29210

Sworn to and subscribed before me

THIS 26th day of September 2014


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires
March 5, 2018

State of South Carolina
County of Greenville

Samuel Lament whitner
Applicant

v.

The State of South Carolina
Respondent

IN THE COURT OF COMMON PLEAS

(Exhibit B)

Case No 2013-CP-23-00765

Motion to relieve Counsel with
consolidation pursuant to Rule
42(a) S.C.R.C.P. of a preliminary
Injunction

The Applicant hereby move before this Honorable Court to relieve
his P.C.R. Counsel

A. evidentiary hearing had convened on the 19th day of June
2014. However, therein the Applicant had presented before the court
merit; to present tangible evidence, which are the Applicants
phone records, and the court had ordered the record to remain
open within a limitation of thirty days, from the initial day that
which the P.C.R. hearing had convened; which to allow the Applicant
to have the opportunity to present the requested phone records
as evidence that which the Applicant had asserted that [his]
phone records are essential; thus for the Applicant to meet the
burden of proof that will satisfy [his] ineffective of assistance
claim, that is set forth within the Applicant's P.C.R. Application
and supplement with attachments which was filed to this court

prior to when this hearing had convened.

Upon the P.C.R. counsel; Esq. Caroline M. Harbeck confrontation with the Applicant, which took place within a ample amount of time prior to when this P.C.R. hearing had convened, the Applicant did informed the counsel, that the Applicant's phone records needed to be obtained, because the Applicant phone records will provide before the court "exculpatory factors"; regarding the Applicant's guilt, and discrediting, to the state's claim of defense; thus contending that the Applicant's daughter's mother had acted with good faith basis when the Applicant's daughter's mother had surreptitiously taped the Applicant conversation without the Applicant's knowledge or consent.

However, prior to the court's order for the record to remain open; P.C.R. counsel had stated before the court that the Applicant's phone records were no longer accessible, and can not be obtained, this assertion that which was implicated by the P.C.R. counsel upon contending that the requested phone records could not be obtained "was refuted," by accordance to the Applicant sister whom was present at the P.C.R. hearing and attest to the fact that the phone record can be obtained.¹

¹ This court had ordered for the P.C.R record to remain open and instructed the P.C.R counsel to obtain the phone records and brief an arguement, which to provide the court with evidence, that will substantiates the ineffective assistance of counsel claim, with regard to the good faith basis concerning vicarious consent.

The P.C.R. counsel had forwarded a June 20 2014 correspondence to the Applicant informing the Applicant that the burden to obtain the evidence (i.e. the Applicant's phone records) was placed upon the Applicant's sister. (see Exhibit, 2)

I.

The P.C.R. Counsel's inadvertent representation within the P.C.R. hearing, that 19th day of June 2014. will establish a cause for a procedural default, concerning the procedural mandates regarding due process of law pursuant to the Uniform Post-Conviction Procedure Act. see Harvey v. South Carolina (1970 DCSC 310 F. Supp 83). The inordinatness administered per Esq. Caroline M. Horlbeck, provides a unjustified delay within the state corrective process, which will result to frustrate the rights of the Applicant and be such a circumstance as to render that process ineffective see Allen v. Leeke (1971 DCSC) 328 F Supp 292, also see Martinez v. Ryan — S.Ct — 2012 WL 912950 (U.S.I). It was held by the Martinez court; that for the Applicant "[t]o present a claim of ineffective assistance at trial in accordance with the state's rules then a prisoner likely needs an effective attorney."

Upon the Applicant's counsel placing the burden upon the applicant's family to meet legal expectation and qualification of that which the P.C.R. counsel is vested of.. and by duty being as Esq. Caroline M. Horlbeck was court appointed to represent the Applicant, and however, neglecting a lawyer's obligation, to assure that vital evidence is before the court..

The Applicant's family is "unlearned" in the law, and which will create a high risk that the Applicant's family will unknowly fail to comply with [state] procedural rules see Cf., e.g., id., at 620-621, 125 S.Ct 2582. citing Martinez v Ryan — S.Ct

2012 WL 912950 (U.S.). The Applicant phone records are evidence that consist outside the trial record. see Martinez supra. The P.C.R. counsel conduct obstruct the Applicant's ability to comply with [state's] established procedure. see Strickler v. Greene 527 U.S. 263, 289, 119 S.Ct. 1936, 144 L.E.2d 837 (1963).

II.

SUBSTANTIVE GROUND FOR THE P.C.R. COUNSEL TO BE RELIEVED..

As stated within S.C.R.C.P. 71.1 (d) (e)

- (b) If after the state has filed its return the application presents question 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.

The Applicant had filed his P.C.R. application on the 8th day of February 2013, and supplement and supporting facts and attachment was filed before the court on the 19th day of February 2014, and therein Applicant's supplement the P.C.R. counsel was advised to amend all issues.² see Exhibit X Page 3). However within the P.C.R.

² see Page.3 of the supplement of issues (Exhibit X) and Rule 71.1 (d) S.C.R.C.P. Noncompliance pursuant to Rule 71.1 (d), can provide moots to the effects that is expected of rule 59 (e) S.C.R.C.P., see McCullough v State. 320 S.C. 270 272 464 SE.2d 340 341 (1995)..

hearing on that 19th day of June 2014. The P.C.R. counsel had contended that the case was ready to proceed with the hearing. P.C.R. counsel, did so proceed, with coherence, with disregards concerning the Applicant's procedural rights pursuant to; S.C. code ann § 17-27-20. (6). The Applicant's Counsel had so failed to amend the supplemental and attachments as evidence with pursuant to S.C. code ann § 17-27-40 - § 17-27-50³. Upon the Applicant's counsel not amending the issue set forth within the Applicant's Supplement; before the P.C.R. hearing had convened on that 19th day of June 2014, frustrates the right of ~~the~~ Applicant pursuant to U.S.C.A 14th amendment and S.C. const Artical 1 § 3.

The Applicant contends that the P.C.R. counsel's willfull misconduct, is considered prejudicial to applicant pursuant to "Rule of law" see: In re Hatley 400 S.C. 470. 735 SE.2d 488. also see S.C.A.C.R 407 Professional conduct Rule 8.4 (a)(1)(f). Such misconduct does provides passible threat of undermining of the Courts integrity see Hawkins V. Bruno Yacht sales Inc 353 S.C. 31. 42. 577 S.E. 2d 202. 208 (203). also see Quinn V. Sharon Corp. 343 S.C. 74 540 SE. 2d 474 (ct. App 2002). Artical 1 § 3 of S.C. constitution

3 South Carolina Rules of civil procedure 71.1 instructs the parties to follow the rules of civil procedure. to the extent they are not inconsistent with the P.C.R. Act.

The Applicant must meet the burden to prove the allegation in the Applicant's application. see Matthews v. state 565 SE.2d 766

guaranteed that defendant could seek a remedy for the violation of rights in a collateral proceeding, see U.S. v. Morrison 449 U.S. 361 365 (1981)..

The P.C.R. counsel had relieved the Appellate counsel of his presence from within the Post conviction hearing that 19th day of June, 2014 without first consulting with the Applicant. moreover, the Applicant did not waive, nor move to waive any issue that was raised within the Applicant's application and supplement. This decision was not secured with the Applicant's consent, prior to or upon taking action within the Post conviction hearing on that 19th day of June 2014. A waiver of issue had not been made by the Applicant per se on the record that 19th day of June 2014.⁴

[MOTION FOR CONSOLIDATION OF A PRELIMINARY INJUNCTION PURSUANT
RULE 42 (a) S.C.R.C.P]

The supreme court has repeatedly reminded all involved parties that "[c]ounsel preparing a proposed order should be meticulous in doing so, opposing counsel should call any omission to the attention of the P.C.R. court. prior to issuance of the order see Hall v. Catoe 360 S.C. 353 365 601 SE.2d 335 341 (2005) also see S.C.A.C.R 501 judicial conduct, CANNON

⁴ The Applicant had admonished this Honorable court of this error regarding P.C.R counsel's misconduct within a July 9th 2014 correspondence to this Honorable court, with certificate of service. certifying that all parties had been served a copy of the same.

§. B (7) (e)), also see, (Exhibit K). The Applicant had forwarded a 7-9-2014 correspondence to this court while the record had remained open that which was by order of this court. see, (Exhibit K). And which that 7-9-2014 correspondence had so addressed a definite immaturity regarding applicability of law in pursuant to S.C. code ann §17-27-80, for several reasons that, (1). The misconduct per the P.C.R counsel to act unlawfully; thus "[tacitly]" before the court had waived the Applicant's issue, upon failing to subpoena the Appellate counsel to the Post conviction hearing that 19th day of June 2014; and in furtherance (2). The Applicant did not offer a waiver, thus for any Issue to be addressed. (3). The issues that concerned ineffective assistance of Appellate counsel that was raised within the Applicant's P.C.R application, and supplements was not addressed because the Appellate counsel whom had represented the Applicant on direct appeal, before the south carolina Supreme court, was not required per the court to be present within the Post conviction proceeding thus to offer testimony. see Evitts v Lucey 469 U.S. 387. 105 S.Ct. 830. 83 L.E.2d 821 (1985)..

— (subject matter, pursuant to s.c. code §17-27-80, is unripe for this court consideration of order)...

Subject matter jurisdiction is the power to hear and determine cases of general class to which the proceeding belong. see Dema v. Tenet Physician Services - Hilton Head, Inc., 383 S.C. 115, 120, 678 S.E.2d 430, 433 (2009). The jurisdiction of a court over the subject matter of a proceeding is determined by the constitution., and the laws of the state. Duckett v. Goforth 374 S.C. 446, 456, 649 S.E.2d 72, 77 (Ct. App. 2007). Issues involving subject matter jurisdiction may be raised at any time. see Arnal v Fraser 371 S.C. 512, 517 n. 2, 641 S.E.2d 419, 421 n. 2 (2007).

Appellate counsel. that which the Appellate Counsel presence within
the P.C.R hearing is required.....

prose Samuel Lamont Whitner
Samuel Lamont Whitner #263066
B.R.C.E WAT 143
4760 Broad River Rd
Columbia S.C. 29210

SWORN AND SUBSCRIBED TO BEFORE ME

THIS 31st day of July 2014

Auson H. Jrp

NOTARY PUBLIC FOR SOUTH CAROLINA

Commission Expires

March 5, 2018

STATE OF SOUTH CAROLINA
County of Greenville

IN THE COURT OF COMMON PLEAS

Samuel Lament whitner
Applicant

Case No 2013-CP-23-00765

v

CERTIFICATE OF SERVICE

The State of South Carolina
Respondent

I the above stated Applicant hereby certify that have filed a motion titled: Motion to relieve counsel with consolidation pursuant to Rule 42 (a) S.C.R.C.P of a preliminary Injunction, and is depositing a copy in the U.S mail on the 31stth day of July 2014. addressed to the Clerk of Court. Paul B. Wickensimer at Greenville County Courthouse 305 East North Street Greenville S.C. 29601-2185, and certify that all parties below has been served the same

Esq. Caroline M. Horlbeck
101 Whitsett St.
Greenville S.C. 29601

Karen C Ratigan
Office of Attorney General
of South Carolina
Rembert C Dennis Building
P.O. Box 11549

SWORN AND SUBSCRIBED BEFORE ME.

THIS 31ST DAY OF July 2014

David A. Frye
NOTARY PUBLIC FOR SOUTH CAROLINA

Samuel Whitner

My Commission Expires
March 5, 2018

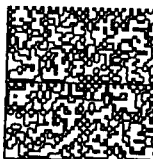
Samuel L. Whitner #263066
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Daniel E. Shearouse
Post Office Box 11330
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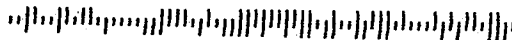
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THE DEPARTMENT OF CORRECTIONS HAS NOT
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ITS CONTENTS.

BROAD RIVER CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS