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DEC 17 2014

S.C. SUPREME COURT December 11, 2014

Daniel Shearouse  
Clerk of Court  
Supreme Court Bldg, P.O. Box 11330  
Columbia, S.C. 29211

Re: Clock Stamping and Filing Enclosures

Dear Mrs. Shearouse:

Enclosed is a letter I sent to my Attorney Lanella Durant. This is "not" a pro se motion. I am only providing you with a copy so that I can later preserve what I informed my counsel of.

I ask that ~~the~~ enclosed letter be clocked stamped for verification purposes of the further.

Your Truly  
Alvin Samuels

Alvin S Samuels, II 351567  
MCI F2 Rm 152B  
386 Redemption Way  
McCormick S.C. 29899

**RECEIVED**

DEC 17 2014

S.C. SUPREME COURT

Mrs. Lonelle Durant  
Appellate Defense  
1330 Lady Street, Suite 401  
Columbia, S.C. 29211

**RECEIVED**

DEC 17 2014

**S.C. SUPREME COURT**

December 11, 2014

Re: Response to Correspondence date November 13, 2014

Dear Mrs Durant:

I am in receipt of your letter dated November 13, 2014. In which you informed me, on page (2) two of your letter that it is your decision as to which issues to submit to the Supreme Court to be reviewed for reversible error. I completely understand that it is your decision as to what issues you raise for judicial review, after I carefully read and evaluated *Anders v. California*, 87 S.Ct 1396, which furtherly states you must provide substantial equality and fair process, and you need not advance every arguement, regardless of merit, urged by the Appellant *Ross v. Moffitt*, 94 S.Ct. 2434.

So after I delved for understanding of the Appellate Process and developed knowledge that the only issues and information that can be presented to the Supreme Court for review has to be presented to the PCR Courts. I wrote you and Mrs McCall a letter dated July 7, 2014 in regards to assisting you, so you can act as an active advocate. This letter is on file with the clerk of court, and Mrs. McCall verified to me that she recieved this letter and would forward it to you immediately upon your appointment.

On page (1) one of your letter dated November 13, 2014, paragraph (4) four states issues raised must have been addressed in the PCR Courts Order of Dismissal, *Dempsey v. State*, 610 S.E.2d 812 (2005). Although the appellant presented evidence of the issues, to the PCR Court, the Honorable Judge James Barbers fails to find a finding of facts and conclusion of

law, as required by Rule 52(a) of Civil Procedures, and §17-27-80. These issues each have a different standard for review other than the (2) two prong test for ineffective assistance of counsel. It is critical that these issues be address, because of the merit, prejudice and standards for review.

Even after the appellant submitted an Motion to Alter or Amend pursuant to Rule 59(c) the PCR Courts still failed to set out a finding of facts and conclusion of law. Regardless of whether an appellant submits a 59(c) motion the PCR Courts, If the record establishes that evidence of the issues were presented at the hearing such issues must be addressed <sup>and</sup> adequately, *McCray v. State*, 408 S.E.2d 241 (1991), *Bostick v. Steveson*, 589 F.3d 160 (2009)

Respectfully, I ask if you can submit this issue to the Supreme Court, so that the order of dismissal may be remanded to the PCR Courts for a finding of facts and conclusion of law as required by Rule 52(a) and 17-27-80, so that they can be properly preserved for appellate court review.

*Respectfully Submitted,*

Alvin S. Samuels II

Alvin Samuels II

386 Redemption Way

McCormick S.C. 29899

• Enclosure

## ISSUE

Did the PCR Courts err when the Order of Dismissal did not specifically and adequately address issues the Appellant presented evidence of for a finding of facts and conclusion of law, being the alluded issues have a different standard for review.

On March 3, 2014 Judge James R. Barber, III entered an Order of Dismissal to the appellants application for post-conviction relief. Denying the appellants application for relief, dismissing it with prejudice (See page (15) fifteen of Order of Dismissal. This final judgement (Order of Dismissal) fails to make specific findings of facts and state expressly the conclusion related to the issues the appellant raised in his application, but moreso presented evidence of, at the evidentiary hearing. Evidence of these issues not addressed in the finding of fact and conclusion of law, but presented, are on page 2 (two) through (4) four in the Order of Dismissal, stating multiple allegations of Ineffective Assistance of Counsel, Due Process Violations, Brady Violation, and Involuntary Guilty Plea (see appellant's PCR applicant, attached memorandum of law, and testimony provided by appellant at evidentiary hearing) The Order of Dismissal specifically acknowledges that these issues were not addressed (See Order of Dismissal page (12) twelve). This Order also states the appllant only moved forward on (5) five claims of Ineffective Assistance of Counsel (see page (4) four.) This part of the Order of Dismissal is disputed by the appellant testimony and evidence present at the evidentiary hearing (see transcript. Also it is disputed by ample evidence in the record, that dont support the PCR Courts Order that the appellant only moved forward on (5) five claims of Ineffective Assistance of Counsel, *Bright v. State*, 618 S.E2d 296, 298. (2005). Moreso only addressing allegations of ineffective assistance of counsel, which are not addressed as the appellant presented them. Furtherly, failing to address the issues nor there merit of which the appellant fairly raised them in the

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application and at the evidentiary hearing, precluding appellate review of these issues.

Pursuant to S.C. Code Ann. §17-27-80(1985) the PCR Judge must make a specific findings of fact and state expressly the conclusion of law relating to "each" issue presented, and the South Carolina Rules of Civil Procedure, Rule 52(a). The failure to adequately and specifically rule on issues precludes appellate review of the issues, *Pruitt v. State*, 423 S.E.2d 127 (1990), *Bryson v. State*, 493 S.E.2d 500 (1997). The Order of Dismissal of the PCR Judge in this matter does not comply with the Rules of Civil Procedures, Statute, moreover fails to properly and adequately specifically address any of the allegations raised by the appellant which the record verifies the appellant did not waiver.

The Order of Dismissal only addresses (5) five allegations of Ineffective of Counsel. The addressed issues of Ineffective Assistance of Counsel are not "what" or "how" the appellant raised them. Evidence of this is in the Order (see page (2) two through (4) four the allegations the appellant raised, those address by the PCR Court are not those which the appellant raised (See page (4) four.

On the other hand, these (5) five allegations of Ineffective Assistance of Counsel are addressed collectively, under the Strickland Standard. Moreover these issues only states alleged facts, which are not supported by the Evidentiary Hearing Transcript, and absolutely no conclusion of law or what part of the Strickland Standard was used to review each issue, to upheld such Order. (It must be noted the appellant testified to various aspect of resulting prejudice, and verifications of counsel falling below professional norms by submitted evidenced.

Furtherly the Order of Dismissal fails to set out the testimony of the appellant, along with the "evidence" the appellant submitted in

establishing prejudice and deficiency of trial counsel to support an proper evaluation of the Strickland or Hill Standard. Nowhere in the PCR Courts Order of Dismissal does it specifically address "any" of the multiple documents the appellant submitted as evidence at the evidentiary hearing pursuant to S.C. Code Ann. 17-27-80. The order fails to institute any law to establish the evidence the appellant submitted, failed to meet the prejudice prong or demonstrate counsel was thereby deficient. Moreover making it completely impossible for the issue the appellant raised at the evidentiary hearing, for a finding of "facts" and conclusion of "law". This is critically damaging towards the actual relief the appellant seek due to its insufficiencies.

The Order of Dismissal completely abandons the appellant allegation of Due Process Violation, Brady Violation, and Involuntary Guilty Plea, for a finding of facts and conclusion of law. The record indicates ample evidence as to the issues being raised at the evidentiary hearing. Wherefore nowhere in the record does the appellant waive any of the presented issues. Therefore they must be ruled upon expressly and specifically for a finding of facts and conclusion of law, as required by SCRCP Rule 52(a) and S.C. Code Ann. § 17-27-80, *Pruitt v. State*, 423 S.E.2d 127, *Bryson v. State* 493 S.E.2d 500. Which precludes appellate review of issue. Wherefore such orders that are inadequate, insufficient and fail to meet the standards set forth by statute are consistently vacated and remanded to PCR Courts *Marlar v. State*, 653 S.E.2d 266, *McCray v. State*, 408 S.E.2d 241 (S.C. 1991)

WHEREFORE, the Appellant prays and request that the PCR Courts Order of Dismissal be vacated and remanded to the PCR Judge upon the fact that the order fails to address appellant's issues with a finding of facts and conclusion of law, including the fact the Due Process Violation, Brady Violations, and Involuntary Guilty Plea, all have a different standard for review

than that for evaluating claims of ineffective assistance of counsel. This failure to address the appellant's issues with a finding of facts and conclusion of law deprives the appellant of "Due Process" under the Fourteenth Amendment, also it make review by the appellate courts more difficult and ultimately increases the work of all involved, citing pruit v. State 423 S.E.2d 127 (S.C. 1992). It has long ago been decided in Pearson v. Harrison 9 Fed. Appx. 85 4<sup>th</sup> Cir. 2001, that the South Carolina Supreme Court has consistently vacated and remand PCR Court Judgements that do not contain findings on issues presented to the court rather than require the applicant to move to alter or amend in order to obtain appellate review. And has done so not with standing a PCR petitioners failure to preserve on issues by filing a Rule 59(e). As in this case the appellant introduced ample evidence of claims of violations other than that of Ineffective Assistance of Counsel which have a different standard for review, in which the PCR Courts Order of Dismissal elludes, which must and therefore be ruled upon.

*Respectfully Submitted*

*Alvin S. Samuel*

This 11 day of December 2014

STATE OF SOUTH CAROLINA  
THE SUPREME COURT

Alvir S. Samuels, II 351567  
Appellant

v.

The State of South Carolina  
Respondent.

IN THE SUPREME COURT  
OF  
SOUTH CAROLINA

Case No: 2014-000739

CERTIFICATE  
OF  
SERVICE

I, Alvir S. Samuels, II, hereby certify that I served a letter and issue upon my Attorney Lanelle Durant and Clerk of Court Daniel Shearouse on December 11 2014, by delivering such documents to the McCormick Correctional Institution Mailroom Personnel to be mailed to the below listed addresses using the United States Prepaid Postage Service:

Lanelle Durant  
Attorney at Law  
1330 Lady Street  
Columbia S.C. 29211

Daniel Shearouse  
Clerk of Court  
P.O. Box 11330  
Columbia, S.C. 29211

Sworn and Subscribed before me  
on this 11 day of Dec. 2014

J. Frankler

Notary Public for South Carolina

My Commission Expires 12/16/2019

Alvir S. Samuels

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