From:

February 3, 2015

Robert Dale Smart

110 Oakridge Drive

Cowpens, S.C. 29330

Re: Smart v. State

Case no. 2015-000073

To the Clerk,

I have enclosed a Motion to Prove PCR COURT'S Decision was Improper, I have also enclosed a postal money order for twenty five dollars. I have also enclosed a copy to be date stamped and returned to me in the enclosed self-addressed envelope.

I appreciate your help and kindness in this matter.

S/ Robert D. Smart

Robert Dale Smart, Pro se

RECEIVED

FEB 06 2015

S.C. SUPREME COURT

The SUPREME COURT OF SOUTH CAROLINA

UNION COUNTY

Robert Dale Smart,	)	Case No. 2015-000073
Petitioner,	)	
v.	)	
	)	
State of South Carolina	)	MOTION TO PROVE PCR COURT'S
Respondent.	)	DECISION WAS IMPROPER

The Petitioner in the above named case would like to take leave and move this court to be allowed to file this MOTION TO PROVE PCR COURT'S DECISION WAS IMPROPER. The Petitioner filed these issues against the COURT NOT THE STATE.

1. Was the Petitioner poisoned by the Tezners (SIC), was he competent at trial, how long does it take to get over arsenic and mercury poisoning, would toxic poisoning make a defendant delusional, does evidence of being poisoned and delusional cause the state to lose jurisdiction?

This is an old issue with new evidence. In 1987, the Petitioner started breaking out in hives three to five times a day with sick headaches, stomach/intestinal trouble and so memory loss, no doctor could tell the Petitioner why the Petitioner had these problems for over ten years. Just before being arrested Dr. Smith treated the Petitioner for blue days (depression), by the time Petitioner went to trial, he could barely think or remember from the toxic chemicals being sprayed into his car by the Tezners. The Tezners used those chemicals on people to defraud them out of money, their victims would not remember loaning them money or property. They defrauded the Petitioner out of $2500.00 in a car deal in 1992, the Petitioner was so sick at that time that he did not understand that they had defrauded him out of the money until 1998 or 1999 and borrowed about $1200.00 in 1997 (on DSS report). The Petitioner presented lab reports before Judge Hayes in 2005 that were never ruled on. The Petitioner had 0.5 MCG/DL of arsenic and 0.5 MCG/DL of mercury in his blood and 1,4 MCG/G of arsenic in his hair over three months after drinking contaminated water at the Tezner home on November 11th. After six months in prison, Tara Shurling cut a sample of Petitioner hair that had 0.23 MCG/G of arsenic, according to the CDC, 0.001MCG/DL is the maximum exposure of arsenic. Petitioner had 0.49 MCG/DL of arsenic above the safe level. The state lost all jurisdiction when Petitioner entered into evidence lab reports that proved he had been poisoned. Dr. Smith has admitted that when mixed arsenic and mercury are even more toxic (a super poison). Buddy Tezner had worked on the kitchen water on Saturday November 8th, 1997 and Petitioner drank foul tasting water on November 11th, he also gave B.T. a half a glass of water, the Tezner became

extremely upset about B.T. becoming sick, she was in the hospital three days later with 105 degrees temperature.

After being convicted, the Petitioner told SCDC doctors about being poisoned and how the food was making him sick and how he was having trouble thinking and remembering. The Petitioner was never treated for the poisoning. The rice SCDC served the Petitioner gave him headaches causing him further mental problems, while eating the rice could barely remember anything. The Petitioner quit eating the rice in 2008, and in 2009 while arguing his Federal habeas corpus, the Petitioner was constantly being locked in his cell for ten to twelve days at a time for unknown reasons, Petitioner was locked down about half of the year of 2009. By November of 2009 when the Petitioner had to argue the Magistrates Report and Recommendation, the Petitioner was in a daze like state and could not think, so were most of the inmates in Mag B at Kershaw CI. While on lock down the Petitioner was put on stale bread, meat, and water and the Petitioner was not allowed to go to the law library. So the Petitioner could not properly argue the Report. The Petitioner ask Judge Anderson to be allowed to go back into state court due to this but was not allowed to go back into state court!

After getting out of prison, the Petitioner went to the V.A. to be checked for brain damage, stomach/intestinal trouble. The V.A. sent Petitioner to Dr. Jonathan Scarff, MD, he diagnosed the Petitioner as having Delusional Disorder on September 12th, 2014 (a copy of his letter has been enclosed). This is new evidence in this case. If the Petitioner is delusional now then he was even more delusional in 2001 when Petitioner was tried.

The jeep that Buddy Tezner contaminated in the 1990s and 2000, has just been sitting at Brady Smart's home all of these years. The Petitioner started driving the Jeep September 10th, 2014. The Petitioner cleaned the vehicle three times to get out any toxic chemical. The Petitioner became quite sick about a week or so later with upset stomach and severe headaches and went to Doctor's Care. The Petitioner thought that he had become sick from a dog scratch. The headaches went away after the Petitioner put a cover over the steering wheel and the gear shift knob. The Petitioner has since bought a used pick-up truck. This is also a new evidence. The Petitioner has asked the Courts to pin-point in the transcripts exactly where the state proved that Petitioner was not poisoned by the Tezners, this issue was improperly ruled on by the PCR courts. The state lost jurisdiction when the Petitioner presented evidence that he had been poisoned at PCR Court. The Petitioner has never heard any kind of argument that proved he was not poisoned.

This medical opinion from Dr. Scarf is new evidence of the Petitioner's mental state. In order to be entitled to a successive Post Conviction Relief Application, the applicant must establish that the grounds could not have been raised in the previous application. Code 1976 Statute 17-27-90 Tilley v State 511 SE2d 689, 334 SC 24 Judge Alford ruled improperly because the state inflicted cruel and unusual punishment on the Petitioner after the Petitioner filed his federal habeas corpus until he had gone to the Supreme Court of the United States, stopping him from properly arguing his issues. Judge Alford's decision was improper. This Court will uphold the findings of the PCR judge when there is any evidence of probative value to support them and will reverse the decision of the PCR Judge when it is controlled by an error of law. Suber v State 371 SC 554, 558-9, 640 SE2d 884-886 (SC 2007)

Where is the state proof that Petitioner was not poisoned?

2. Why did the Assistant Attorney General (Rutledge Johnson) not informed the Petitioner of the hearing for the state to prove jurisdiction, was this a continuing conspiracy by the Attorney General's Office to maintain a conviction without proof beyond a reasonable doubt or jurisdiction and with a defective indictment, can subject matter jurisdiction be brought up at any time even after being released from prison, while on community supervision?

The Petitioner kept raising the issue of variance of indictment, but never comprehended that it inferred lack of jurisdiction until reading a cite in, Bailey v. State 709 SE2d 671, 392 S.C. 422 (S.C.2011). SCDC quit buying any law books on in January of 2003 and started back in about 2012 at Kershaw CI. The Petitioner finally found this case law (Bailey v. State) in 2013, SCDC did not have the book until sometime in 2012. Before Bailey the books did not even mention that variance of indictment cause a state to lose jurisdiction. The alleged hearings was August 4th, 2014, about two weeks later, the Petitioner received a motion from Attorney Johnson asking for a new hearing since Petitioner was not properly informed of the first hearing. The Petitioner was never informed of the hearing at all, he had filed a Motion to Compel the State to prove jurisdiction. After receiving the Motion from Attorney Johnson, the Petitioner wrote the Clerk of Court for York County asking if a hearing had been scheduled, The Clerk wrote back that he had no record of the hearing. So the Petitioner is now requesting a copy of the transcripts for the hearing. This was denial access to court and the state refusing to prove jurisdiction making this a new issue. Access to the courts is a constitutional right, grounded in the First Amendment. Chappell v. Rich 340 F3d 1279 (11th Cir. 2003) The state finally sent the Petitioner an argument that jurisdiction should have been brought up in 2003 by Tara Shurling, she took over $20,000.00 from the Petitioner and then refused to raise any issues for the Petitioner. Petitioner could write her a letter and she would not even write back making her intentional ineffective assistance of counsel. Attorneys John B. White, Frank Eppes Jr, and Wanda Carter also refused to raise issues for the Petitioner, which is a continuing conspiracy by the Attorneys of S.C.. Each and every one of the Attorney should have raised this jurisdictional issue making this ineffective assistance of counsel.

Since the Supreme Court of the United States has never established a standard for proving innocence, this is one way of proving innocence. If a Court cannot pin-point on the transcript exactly where the state proved guilt, then the Defendant is entitled to a directly verdict. This is a new issue since Petitioner was held in prison in a cruel and unusual manner unable to think or remember. At the trial in 2001 the state never proved one element of the crime. The evidence proved the B.T. was molested after November 27, 1997. The indictment period ended November 27th, 1997.

In 1998, state law plainly stated that the only ones that could be charged with molesting a child were the parents, a day care operator, someone with legal custody, and possibly a neighbor, the Petitioner saw the child victim about once a month. The state waited two years nine months after the arrest to rubberstamp the indictment. Detective Haney (Investigating officer) has informed Brady that he never testified before a grand jury in this case and his signature does not appear on the indictment as a witness. The indictment was rubber-stamped which the state has not denied. A conviction obtained without the presentment of a grand jury will be voided on appeal. Const Art. I & II The law requires the presentment of a grand jury as a condition precedent trial of a crime except certain minor offenses. Const Art. I & II Also Anderson v. State, 527 SE2d 398, 388 SC 629 S.C. 2000) According to this, the State cannot base a conviction on a rubber stamped indictment.

Subject matter jurisdiction may be raised at any time, and thus the Supreme Court was able to review defendant's claim that trial court lacked subject matter jurisdiction on grounds that the indictment was insufficient, even though he failed to raise the issue until his Petition for Certiorari. Hooks v. State, 577 SE2d 211, 353 S.C. 48 (S.C. 2003) Failure to sufficiently allege all of the elements of the offense is a jurisdictional defect that cannot be waived and can be raised at any time. Thompson v. State 593 SE2d 139, 357 S.C. 192 (S.C.2004) Jurisdictional issues are never waived and can be raised on collateral attack. 28 USCA 2255 Claims of subject matter jurisdiction can never be waived or forfeited because it involves the court's power to hear the case. U.S.v Delgado 374 F3d 1337, 1341 (D.C. Cir. 2004) So the Petitioner was entitled to have a hearing and make the state prove jurisdiction because the Courts must prove jurisdiction. As a general rule that lack of subject matter jurisdiction may be raised at any time supercedes S.C. Code statute 17-19-90. Judge Alford's decision was improper, he has demonstrated an ignorance of the laws on subject matter jurisdiction. This court will reverse the decision of the PCR judge when it is controlled by an error of law. Suber v. State, Judge Alford's decision was improper.

3. Is a lie detector test admissible at PCR court, is it new evidence, was Judge Lee Alford decision improper, does passing a lie detector test cause the state to lose jurisdiction?

This is a new issue that could not have been raised in a prior PCR, since the Petitioner was ordered by SCDPPPS and Three Trees Center for Change to take the test administered by Goldstein of Charlotte, NC in September of 2014 in York County at Three Tree Center for Change. The Petitioner is the first person to pass the lie detector test in the history of Three Trees. The Petitioner passing a lie detector test would have swayed the jury's decision and produced a not guilty verdict. This court will uphold the findings of the PCR Judge when there is any evidence of probative value to support them and will reverse the decision of the PCR Judge when it is controlled by an error of law. Suber v. State 371 SC 554, 558-9, 640 SE2d 884, 886 (SC 2007) Judge Alford improper ruled on the matter.

4. Was the Petitioner entitled to a timely appeal on the newly enacted DNA testing Act, did this violated the Petitioner state and federal constitutional rights under this new law, was this further civil and criminal conspiracy to cover-up the Petitioner's innocence, was Judge Alford's decision improper?

In 2012, Petitioner filed a DNA application, Attorney Laura Saunders was appointed as his attorney. The DNA application was to be treated as part of the original trial. The state produce no DNA to prove guilt and Judge Alford refused to do a DNA test to check Petitioner for long term toxic poisoning. On the transcript not one doctor testified that B.T. was molested during the indictment period. Judge Alford dismissed the case, Petitioner requested Attorney Saunders to appeal the decision. In January of 2013, the Petitioner received a letter from the Court of Appeals, Attorney Sanders had filed an untimely notice of intent to appeal, the case had been dismissed, failure to properly appeal is jurisdictional and not subject to harmless error analysis. Farley Transp. Co. Inc. v Santa Fe Trail Transportation Co 778 F2d 1365, 1368 (9th Cir 1985) The Defendant's right to effective assistance of counsel applies not just at trial but also on direct appeal. Evitts v. Lucey, 469 US 387, 105 S.Ct. 830 (1985) This is a newly enacted law and was unavailable when Petitioner filed his PCR. Defendants have a right to a meaningful appeal based on a complete transcript. U.S. v. Higgins, 191 F3d 532 (4th cir. 1999) Judge Alford's decision was improper and or based on an error of law. This Court will uphold the findings of the PCR judge when there is any evidence of probative value to support them and will reverse the decision of the PCR judge when based on an error of law. Suber v. State, 371 SC 554, 558-9, 640 SE2d 884, 886 (SC 2007) Judge Alford's decision was improper.

5. Was the Petitioner sentenced to two years of community service, was this cruel and unusual punishment?

Three months before being released from prison, the Petitioner is informed that he has to serve community supervision about July of 2013. He was never informed by his attorney or trial judge that he had community supervision. Nowhere on the transcripts or the sentencing sheet does a judge order the Petitioner to community supervision.

Under statute 24-21-560 THE COURT SHALL TERM DETERMINE WHETHER (1) IF THE TERMS OF THE COMMUNTY SUPERVISION ARE FAIR AND REASONABLE.

The Petitioner wanted to leave the state but was not allowed to move by SCPPPS. Then the Petitioner was being forced by SCPPPS to pay $90.00 per week for a crime he did not commit totaling about $5000.00 which the Petitioner did not have. Then Petitioner had to move in with his brother Brady who has stage four prostate cancer inflicting a financial hardship on Petitioner's brother. This is a new issue that Petitioner found out about in July of 2013, the Petitioner refused to sign the release paper due to this community supervision.

Judge Alford did not rule on this issue making his decision IMPROPER and his decision was controlled by an error of law. This court will uphold the decision of the PCR judge of there is any evidence of probative value to support them and will reverse the decision of the PCR judge when it is controlled by an error of law. Suber v. State, 371 SC 554, 558-9, 640 SE2d 884, 886 (SC 2007)

6. Is the mother of the child victim using an alias to cover up her continuing criminal activity?

The Petitioner was ordered by his probation office to make no contact with the victim, so he looked up Connie Tezner (SIC) on the internet (October 2013) to make sure he went nowhere near them. The Tezner had moved had to the Greenwood, John is allegedly dead, Connie has remarried to James Christiam (SIC). That Connie is going by the name of Vickie Strasburg. Strasburg is smelled five different ways. She is doing this to cover up her criminal activity. Petitioner does remember someone calling her VICKIE back in the 90,s but she denied knowing the guy. Connie stated, "he's mistaken me for someone else." If she is using aliases now then she was using aliases back then. The Petitioner is trying to find someone to help his investigate this matter further. Only criminals use aliases. Judge ALFORD did not rule on this issue. This is newly discovered evidence because Petitioner did not have internet service until after being released from prison October 1st, 2013. If presented at court, the mother having five aliases would have produced a not guilty verdict. Judge Alford's decision was in error. This Court will uphold the findings of the PCR judge when there is any evidence of probative value to support his decision and will reverse the decision of the PCR judge when it is controlled by an error of law. Suber v. State, 371 SC 554, 558-9, 640 SE2d 884, 886 (SC 2007)

NEWLY DISCOVERED EVIDENCE

In order to be entitled to a successive PCR application the Applicant must establish that the grounds raised in the subsequent application could not have been raised in the previous application. Code 1976 statute 17-27-90, Tilley v State, 511 Se2d 689, 334 S.C. 24 Judge Alford's decision was improper due to the statute. This Court will uphold a PCR judge when there is any evidence of probative value to support

them and will reverse the decision of the PVR judge when it is controlled by an error of law. Suber v State 371 SC 554, 558-9, 640 SE2d 884, 886 (SC 2007)

What evidence is the PCR Judge basing his jurisdiction on?

In newly discovered evidence, the court of appeals looks at 5 factors (a) the evidence must be newly discovered, discovered since trial, (b) facts must be alleged from which the court may infer due diligence on the part of the movant, (c) the evidence relied on must not be merely cumulative or impeaching, (d) it must be material to the issues involved, (e) it must be such and of such nature as that on a new trial, the newly discovered evidence would probably produce and acquittal. Fed Rules Cr. Proc 33, 18 U.S.C.A. Quoted in U.S. v Robinson, 627 F3d 941 (4th Cir. 2010)

Jurisdiction

Lack of subject matter jurisdiction is fundamental and may not be waived by consent of the parties. Brown v. State, 540 Se2d 846 (S.C. 2001) A judgment by a court cannot be affirmed where the court had no right to act. State v Smalls, 336 SC 301, 519 Se2d 793 (SC. Ct. App. 1999) Actions and judgments of the court in the absence of subject matter jurisdiction are void. A general rule that lack of subject matter jurisdiction may be raised at any time supercedes S.C. Code Statute 17-19-90. Judge Alford's decision was improper due to State v. Smalls 336 SC 301, 519 Se2d 793 (S.C. Ct. App. 1999)

Pro Se pleadings

The Petitioner knows that he has some typos in this motion, please bare with him.

Pro Se litigants must be ensured meaningful access to the courts. Rand v. Rowland, 154 F3d 952 (9th Cir. 1998) Pro se litigants pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with pleadings requirements. Haines v. Kerner , 404 US 519, 92 S.Ct. 594 (1972)

Relief requested:

For the Supreme Court of South Carolina to prove jurisdiction by pin-pointing on the transcript where the state proved that B.T. was molested during the indictment period and the other issues presented.

Petitioner prays for the granting this Motion proving that Judge Alford ruled improperly.

Respectfully submitted,

February 3rd, 2015

S/ Robert D. Smart

Robert Dale Smart Pro se

THE SUPREME COURT OF SOUTH CAROLINA

IN UNION COUNTY

Robert Dale Smart,	)	
Petitioner,	)	Case No. 2015-000073
V.	)	
State of South Carolina	)	Motion to Prove PCR's Courts
Respondent.	)	Decision was Improper

CERTIFICATE OF SERVICE

I, Robert Dale Smart, certify that on this 3rd day of February, 2015 served a copy of the MOTION TO PROVE PCR COURT's DECESION WAS IMPROPER by placing a copy in the United States mail postage prepaid and addressed as follows:

Office of the Attorney General

State of South Carolina

PO box 11549

Columbia, S.C. 29221-1549

S/ Robert D. Smart

February 3rd, 2015

Robert Dale Smart pro se

IN THE SUPREME COURT OF SOUTH CAROLINA

IN UNION COUNTY

Robert Dale Smart	)	
Petitioner,	)	Case no, 2015-000073
v.	)	
State of South Carolina	)	Motion to Prove Judge Alford's
Respondent.	)	Decision was Improper

I, Robert Dale Smart, swear under the penalty of perjury that this motion is not frivolous and filed in good faith.

February 3, 2015

S/ Robert D. Smart

Robert Dale Smart Pro se

Sworn or affirmed and subscribed before me

On this 3 day of February 2015

S/ Teresa D. Chadwick

NOTARY PUBLIC OF SOUTH CAROLINA

My commission expires: March 13, 2022

DEPARTMENT OF VETERANS AFFAIRS
Spartanburg Community Based Outpatient Clinic
279 North Grove Medical Park Drive
Spartanburg, South Carolina 29303
864-582-7025

September 12, 2014

RE: Robert Smart (DOB February 11, 1949)

To Whom It May Concern:

Mr. Smart was referred to mental health from his primary care physician, Dr. Depra. I have seen him for two visits. His current diagnosis is Delusional Disorder.

At the initial visit, he declined medications. At the second visit, he again declined mental health medications or psychotherapy. He was tending to his activities of daily living and denied suicidal or homicidal ideation and did not present a danger to himself or others in my professional opinion.

As he did not have an interest in receiving medications or therapy, I informed him that he did not need further appointments with me and could reschedule with me in the future if he desires otherwise. I informed him and Dr. Depra that I was referring back to primary care to address any medical issues that may arise. He expressed understanding of and agreement with this plan.

If you have any questions, please feel free to contact me.

Sincerely Yours,

Jonathan Scarff MD

Jonathan Scarff, MD