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To The Honorable Clerk,

Please find enclosed the Petitioner's Pro Se Response in CASE # 2014-000592. This is the 3rd time in a single week, beginning 01.26.15 that Petitioner has attempted to send out a "response". The first two are lost and unaccounted for. Please file this A.S.A.P. so that the claims contained herein can be considered.

Humbly,

Chris Johnson #350430
P.O. Box 1151
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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO GREENVILLE COUNTY
G. EDWARD WELMAKER, CIRCUIT COURT JUDGE

CHRISTOPHER JOHNSON,
PETITIONER,
V.
STATE OF SOUTH CAROLINA,
RESPONDENT

APPELLATE CASE NO. 2014-000592

PETITIONER'S PRO SE RESPONSE

CHRISTOPHER JOHNSON #350430
P.O. BOX 1151
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ISSUES PRESENTED

- ALLOCUTION

- THE 'ALFORD' PLEA; NORTH CAROLINA V. ALFORD, 400 U.S. 25, 91 S.CT. 160 (1970)

- PLEA COUNSEL'S PERJURY AT THE PCR HEARING AND ITS REVELATION THAT HE FAILED TO INVESTIGATE PETITIONER'S CLAIMS

ARGUMENTS: ALLOCUTION

BLACK'S LAW DICTIONARY (8TH ED., 2004) DEFINES "ALLOCUTION" AS: "FORMALITY OF COURT'S INQUIRY OF PRISONER AS TO WHETHER HE HAS ANY LEGAL CAUSE TO SHOW WHY JUDGEMENT SHOULD NOT BE PRONOUNCED AGAINST HIM ON VERDICT OF CONVICTION." "ALLOCUTION" REFERS TO THE COMMON LAW PRACTICE OF THE COURT "FORMALLY INQUIRING OF THE DEFENDANT WHETHER HE HAD ANYTHING TO SAY WHY SENTENCE AND JUDGEMENT SHOULD NOT BE PRONOUNCED." STATE V. PHILLIPS, 215 S.C. 314, 54 S.E.2D. 901 (1949); STATE V. PRESIDENT, 20 S.C. 363 (1884). "ALLOCUTION IS THE DEFENDANT'S RIGHT TO SPEAK ON HIS OWN BEHALF AFTER THE FACT FINDER DETERMINES GUILT BUT BEFORE THE JUDGE PRONOUNCES SENTENCE. DEFENDANT'S CLOSING ARGUMENT IS NOT

ALLOCUTION, BUT IS HIS OPPORTUNITY TO PRESENT ARGUMENTS IN MITIGATION BEFORE THE FACT FINDER DELIBERATES." STATE V. STOKES, 345 S.C. 368, 548 S.E. 2D. 202 (2001), QUOTING BASSETT V. COMMONWEALTH, 222 VA. 844, 284 S.E. 2D. 844 (1981).

SENTENCING IS "CRITICAL STAGE" OF CRIMINAL PROCESS, TO WHICH CONSTITUTIONAL DUE PROCESS GUARANTEES APPLY. BOARDMAN V. ESTELLE, 957 F.2D. 1523 (1992). DEFENDANT WHO CHOOSES TO BE REPRESENTED BY COUNSEL DOES NOT WAIVE HIS RIGHT TO ALLOCUTION BEFORE SENTENCING. ID. "THE RIGHT OF ALLOCUTION 'CONTEMPLATES AN OPPORTUNITY FOR THE DEFENDANT TO BRING MITIGATING CIRCUMSTANCES TO THE ATTENTION OF THE COURT'." ID., QUOTING SILVERMAN V. U.S., 383 F.2D. 837, 839 (1967). DENIAL OF THE "TRADITIONAL RIGHT OF A CRIMINAL DEFENDANT TO ALLOCUTION PRIOR TO THE IMPOSITION OF SENTENCE" GROPPI V. LESLIE, 404 U.S. 496, 92 S.Ct. 582 (1972), WAS RECOGNIZED AS REQUIRING REVERSAL AS EARLY AS 1689, BOARDMAN, AT 1526.

THE SIXTH AMENDMENT "DOES NOT PROVIDE MERELY THAT A DEFENSE SHALL BE MADE FOR THE ACCUSED; IT GRANTS TO THE ACCUSED PERSONALLY THE RIGHT TO MAKE HIS DEFENSE." FARETTA V. CALIFORNIA, 422 U.S. 806, 95 S.Ct. 2525 (1975). THE FOURTH CIRCUIT FOUND THAT THE RIGHT OF ALLOCUTION WAS CONSTITUTIONALLY GUARANTEED IN ASHE V. NORTH CAROLINA, 586 F.2D. 334 (1978), CERT. DEN. 441 U.S. 966, 99 S.Ct.

2416 (1979). ARTICLE ONE, SECTION FOURTEEN PROVIDES, IN PART, THAT: "... ANY PERSON CHARGED WITH AN OFFENSE SHALL ENJOY THE RIGHT TO... BE FULLY HEARD IN HIS DEFENSE BY HIMSELF OR BY HIS COUNSEL OR BY BOTH..." (EMPHASIS ADDED).

ON APRIL 9, 2012, PETITIONER, UPON BEING INFORMED BY HIS PLEA COUNSEL THAT A TRIAL BASED UPON HIS MERITORIOUS FOURTH AMENDMENT CLAIMS OF FALSE ARREST, ILLEGAL SEARCH-AND-SEIZURE, EVIDENCE TAMPERING, PERJURY, ETC., WOULD NOT BE FORTHCOMING, NOR WOULD A REQUESTED 'FRANKS' HEARING (FRANKS V. DELAWARE, 438 U.S. 154, 98 S.Ct. 2674 (1978)), AND UPON HIS BEING MISINFORMED BY PLEA COUNSEL THAT PLEADING "GUILTY," OR UNDER 'ALFORD', WOULD ALLOW HIM TO BE PAROLE ELIGIBLE AT SOME UNKNOWN POINT IN HIS INCARCERATION, ENTERED A PLEA UNDER 'ALFORD'.

PRIOR TO BEING TOLD BY PLEA COUNSEL THAT HIS BEST CHANCE AT TRIAL WAS "TO TRY TO MUDDLE THE ISSUES AND HOPE FOR A MISTRIAL" (APP. 116, LL. 4-6) AND THAT PAROLE WAS AVAILABLE, IN THE EVENT OF A PLEA, PETITIONER HAD BEEN STEADFAST IN HIS REFUSAL TO PLEA, AND ADAMANT ABOUT HIS DESIRE FOR A TRIAL. ALTHOUGH A PLEA OFFER OF FIFTEEN YEARS HAD BEEN PROPOSED AS EARLY AS LATE-APRIL, 2011, PETITIONER HAD REFUSED TO ENTERTAIN ANY AND ALL PARTS OF IT. IN FACT, HIS STEADFASTNE

SS WAS SO WELL-KNOWN TO THE PRINCIPALS OF THE CASE, THAT SOLICITOR JOYCE K. MONKS MADE MENTION OF IT WHEN SHE ATTEMPTED TO ARGUE FOR A HARSHER SENTENCE OF THE PETITIONER AT THE PLEA HEARING / SENTENCING (APP. 10, LL. 14-17).

AFTER PETITIONER'S INITIAL MEETING WITH PLEA COUNSEL, AT THE GREENVILLE COUNTY DETENTION CENTER ("G.C.D.C."), DURING WHICH THE FACTS OF HIS CASE, DIFFERENT TYPES OF PLEAS, AND PAROLE ELIGIBILITY WERE DISCUSSED, PETITIONER BEGAN WORKING ON A 'PRE-EMPTIVE' ALLOCUTION STATEMENT, IN CASE OF AN ADVERSE VERDICT AT TRIAL, SLATED TO BEGIN TWO WEEKS FROM THE DATE OF THE INITIAL MEETING, ON APRIL 16, 2012. THE INITIAL MEETING TOOK PLACE ON APRIL 2, 2012. BY THE WEEKEND FOLLOWING, A "ROUGH DRAFT" (APP. 12, LL. 23) HAD BEEN COMPLETED BY THE PETITIONER AND PLACED IN A LARGE LEGAL ENVELOPE ALONG WITH HIS OTHER "LEGAL" DOCUMENTS.

ON APRIL 9, 2012, WHEN PETITIONER WAS CALLED TO BE TAKEN THE COURTHOUSE, TO MEET WITH HIS PLEA COUNSEL, HE HAD HAD NO PLANS TO ENTER A PLEA. AT THE INITIAL MEETING, PLEA COUNSEL INFORMED THE PETITIONER THAT HE MIGHT HAVE HIM BROUGHT TO THE COURTHOUSE, IN ORDER TO FURTHER DISCUSS HIS CASE. AT NO TIME PRIOR TO THE SECOND MEETING DID PETITIONER PLAN ON TAKING A PLEA OF ANY TYPE, ALTHOUGH PLEA COU-

NSEL TESTIFIED, IN PCR COURT, OTHERWISE (APP. 123, LL. 10-14). HOWEVER, AFTER A DISCUSSION ABOUT THE PLEA COUNSEL'S SELF-ADMITTED LACK OF COURTROOM 'PROWESS' AND THE MIS-INFORMATION ABOUT PAROLE ELIGIBILITY, PETITIONER, DID, IN FACT, TAKE AN 'ALFORD' PLEA.

PRIOR TO CHANGING HIS PLEA, PETITIONER ALERTED HIS PLEA COUNSEL THAT HE HAD BEEN WORKING ON AN ALLOCUTION STATEMENT, WAS ACTUALLY IN POSSESSION OF A "ROUGH DRAFT" OF IT, AND TOLD HIM HE WANTED TO READ IT AT THE HEARING, IN ORDER TO HELP MITIGATE HIS OWN CIRCUMSTANCES, ESPECIALLY SINCE PLEA COUNSEL KNEW ABSOLUTELY NOTHING ABOUT THE PETITIONER'S HISTORY INCLUDING (BUT NOT LIMITED TO): SOCIAL HISTORY, FAMILY HISTORY (INCLUDING ABUSE OF EVERY FORM AND FASHION), EDUCATION, CHEMICAL DEPENDENCY / TREATMENT, ETC. IN FACT, AT THAT POINT, ALL PLEA COUNSEL KNEW ABOUT THE PETITIONER WAS WHAT HE HAD READ IN THE POLICE REPORTS, AND IT SOON SHOWED.

AT THE PLEA HEARING, THE BEST "MITIGATION" PLEA COUNSEL WAS ABLE TO OFFER (CONCERNING THE PETITIONER HIMSELF) WAS "HE IS VERY INTELLIGENT" (APP. 12, LL. 2). THE REST OF PLEA COUNSEL'S "MITIGATION" CONCERNED DETAILS OF THE PETITIONER'S CASE, BUT WERE MORE IMPLICATIVE AND DEFAMATORY THAN MITIGATING (E.G. "... HE HAD PURCHASED THE DRUGS AFTER HE CAME

SCENE..." (APP. 11, LL. 15-16) AND "... HE SAID... SHE HAD LIKE A $500 A DAY HABIT. HE WAS, UH, BUYING FOR HER..." (APP. 11, LL. 23-25). PLEA COUNSEL'S INABILITY TO ARTICULATE MORE SUBSTANTIALLY WAS ALMOST ENTIRELY DUE TO THE TWIN FACTS THAT: PLEA COUNSEL BARELY KNEW THE PETITIONER (APP. 12, LL. 1-2; APP. 6, LL. 17-18) AND BECAUSE PLEA COUNSEL HAD CONDUCTED NO INVESTIGATION INTO PETITIONER'S PAST OR HIS CASE, A DETAIL HE LATER BLAMED ON PETITIONER (APP. 125, LL. 15-22). PLEA COUNSEL'S IGNORANCE, REGARDING HIS CLIENT'S "PARTICULARS", AS WELL AS HIS LACK OF DUE DILIGENCE, IN INVESTIGATING HIS CASE AND/OR BACKGROUND, FAIRLY DICTATED THAT HIS CLIENT ATTEMPT TO 'SAVE HIMSELF,' AND, IN BOTH INSTANCES, HIS PERFORMANCE WAS DEFICIENT (SEE NANCE V. OZMINT, 626 S.E.2D. 878 (S.C. 2006)- TRIAL COUNSEL'S FAILURE TO INVESTIGATE, PLAN, AND PRESENT A DEFENSE CONSTITUTED "A CLASSIC EXAMPLE OF A COMPLETE BREAKDOWN IN THE ADVERSARIAL PROCESS." AMONG DEFENSE COUNSEL'S FAILINGS: FAILING TO PRESENT MITIGATING SOCIAL HISTORY EVIDENCE; SIKES V. STATE, 448 S.E.2D. 560 (S.C. 1994)-TRIAL COUNSEL FOUND INEFFECTIVE FOR FAILING TO RAISE A MERITORIOUS FOURTH AMENDMENT CLAIM THAT DEFENDANT WAS IMPROPERLY DETAINED WHERE THE ONLY EVIDENCE OF DEFENDANT'S GUILT WAS DISCOVERED AS A RESULT OF THE UNLAWFUL DETENTION).

AFTER ENTERING THE 'ALFORD' PLEA, BUT BEFORE BEING SENTENCED, PETITIONER ATTEMPTED TO READ HIS ALLO-

CUSTOM STATEMENT. ALTHOUGH THE PCR COURT SOMEHOW FOUND THAT THE SENTENCING JUDGE HAD A COPY OF THIS STATEMENT IN ITS DENIAL OF PETITIONER'S PCR (APP. 139), THIS WAS AN ERRONEOUS FINDING. PETITIONER'S "ROUGH DRAFT" WAS THE SOLE COPY OF THAT STATEMENT, IN EXISTENCE, AT THE PLEA HEARING. HANDWRITTEN, AND COMPLETED JUST A DAY OR SO PRIOR TO THE PLEA HEARING, PETITIONER HAD HAD NO OPPORTUNITY REFINE A COPY OF HIS STATEMENT, MUCH LESS REPRODUCE IT. IT IS THE EXACT REASON WHY PLEA COUNSEL DID NOT KNOW ITS LENGTH: HE HAD NEVER SEEN IT, NOR HAD HE, AS PETITIONER'S COUNSEL, BEEN ASKED TO SUBMIT A COPY TO THE COURT AND/OR SOLICITOR. HIS IGNORANCE ON ITS LENGTH IS CLEAR AND RECORDED: "...HE TOLD ME HE HAD PREPARED A STATEMENT. HE CAME NOWHERE NEAR TELLING ME HOW LONG THIS STATEMENT WAS..." (APP. 125, LL. 2-3). IT IS ALSO WHY THIS COPY WAS NECESSARY FOR THE COURT RECORD, POST-CONVICTION (APP. 21, LL. 7-10).

JUST AFTER BEGINNING HIS ALLOCUTION, IT BECAME READILY APPARENT TO PETITIONER THAT HIS STATEMENT'S CONTENT WAS MAKING SOME PEOPLE IN THE COURTROOM UNCOMFORTABLE, EVEN SQUEAMISH FOR THE COURT. IT WAS AN UNPLEASANT GLIMPSE INTO SOMEONE ELSE'S UPBRINGING AND SOCIAL CIRCUMSTANCES. FOR THE PETITIONER, HOWEVER, IT WAS A RETURN TRIP TO HELL. AFTER JUST READING A FEW PAGES OF WHAT HE HAD INTEN-

DED, THE PLEA JUDGE FORCED THE TRUNCATION OF THE PETITIONER'S STATEMENT BY INTERJECTING: "ALL RIGHT. THIS IS PROBABLY THE STUFF WE CAN KIND OF PARE DOWN A LITTLE BIT THERE." (APP. 21, LL. 4-5). AT THIS POINT, PLEA COUNSEL SHOULD HAVE PROTESTED AND OBJECTED TO THE CONSTITUTIONAL VIOLATION, ESPECIALLY SINCE HE HIMSELF COULD NOT, AND DID NOT, ATTEMPT ANY SORT OF MEANINGFUL "MITIGATION", AND HAD RELEGATED THE TASK TO THE PETITIONER (APP. 11, LL. 11-14).

INSTEAD OF OBJECTING TO THE OBVIOUS RIGHTS' VIOLATION, PLEA COUNSEL INSTEAD ENJOINED THE COURT, STATING: "I WOULD DO ABOUT A MINUTE MORE" (APP. 21, LL. 11). THIS HAD THE EFFECT OF MOVING PETITIONER'S ALLOCUTION FROM THE REALM OF 'TRUNCATION' INTO 'EVISCERATION'. AT SUCH A CRITICAL TIME AS ALLOCUTION, THE PETITIONER WAS IN NO POSITION, OR EVEN STATE OF MIND, TO ARGUE WITH OR ANTAGONIZE THE COURT. AFTER BEING CONVICTED, THE DEFENDANT IS USUALLY SO CRUSHED AS TO BE SILENT TO MAKE DEMANDS LEST THEY BRING INCREASED PUNISHMENT... MIXON V. U.S., 214 F.2D. 364, 366 (1954). BEFORE PLEA COUNSEL ADDED A 'TIME FRAME' TO THE COURT'S REQUEST TO "PARE DOWN" HIS STATEMENT, THE POSSIBILITY OF SIMPLY MOVING PAST THAT DETAIL, AND INTO THE NEXT, EXISTED. AFTER ALL, IT WAS NOT THE COURT'S SUGGESTION TO WRAP UP IN A "MINUTE." AFTER PLEA COUNSEL'S STIPULATION, AND THE COURT'S SEEMING 'CONSENT' BY VIR-

DUE OF HIS SILENCE REGARDING PLEA COUNSEL'S 'TIME FRAME', PETITIONER'S ALLOCUTION WAS DOOMED. INSTEAD OF BEING ALLOWED TO FINISH WHAT WAS AN ELOQUENT, IF HARROWING, PERSONAL HISTORY, PETITIONER, BY DINT OF HIS OWN COUNSEL'S DEFICIENT PERFORMANCE, WAS REDUCED TO A STATE OF FORCED 'IMPROVISATION' AND 'AD-LIBBING' (APP. 21, LL. 12 - APP. 30, LL. 17), LITERALLY AS FAST AS HE COULD SPEAK, IN ORDER TO SALVAGE WHAT HE COULD OF HIS ALLOCUTION. BECAUSE PETITIONER WAS SUBSEQUENTLY SENTENCED TO THE MAXIMUM FOR "PWID" AND EIGHT YEARS PAST THE MANDATORY MINIMUM FOR "TRAFFICKING", PLEA COUNSEL'S PERFORMANCE (IN NOT RECOGNIZING AND/OR OBJECTING TO THE VIOLATION, AS WELL AS HELPING TO EXPAND AND AGGRAVATE THE VIOLATION) SATISFIES BOTH PRONGS OF THE 'STRICKLAND' TEST (STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S. CT. 2052 (1984)): 1) COUNSEL FAILED TO RENDER REASONABLY EFFECTIVE ASSISTANCE UNDER PREVAILING PROFESSIONAL NORMS, AND 2) PETITIONER WAS PREJUDICED BY HIS COUNSEL'S INEFFECTIVE PERFORMANCE.

AT PLEA COUNSEL'S INSISTENCE, AND THROUGH COUNSEL'S IGNORANCE AND/OR INDIFFERENCE, PETITIONER'S SOLE OPPORTUNITY TO BE HEARD, FROM HIS OWN MOUTH, AND ON HIS OWN TERMS, WAS LOST. JUST AFTER THE PETITIONER STOPPED SPEAKING, THE STATE WAS GIVEN A 'FINAL WORD' (APP. 31, LL. 16-19). PLEA COUNSEL'S ACTIONS AND FAIL-

JONES TO ACT, HAD, IN EFFECT, GUARANTEED THAT EVERY-ONE INVOLVED, SAVE FOR THE PETITIONER, GOT TO SAY EXACTLY WHAT THEY WANTED TO SAY, AND FOR AS LONG AS THEY WANTED TO SAY IT. WHEN [DISTRICT] COURT HAS DISCRETION TO IMPOSE SENTENCE SHORTER THAN ONE SELECTED, DENIAL OF DEFENDANT'S RIGHT OF ALLOCUTION IS NOT HARMLESS ERROR. U.S. V. CARPER, 24 F.3D. 1157 (1994). THE RIGHT OF ALLOCUTION ALLOWS A DEFENDANT TO PERSONALLY ADDRESS THE COURT BEFORE SENTENCING IN AN ATTEMPT TO MITIGATE PUNISHMENT. U.S. V. BARNES, 948 F.2D. 325, 328 (1991). ALLOCUTION IS DESIGNED TO TEMPER PUNISHMENT WITH MERCY IN APPROPRIATE CASES, AND TO ENSURE THAT SENTENCING REFLECTS INDIVIDUALIZED CIRCUMSTANCES. U.S. V. DE ALBA PAGAN, 33 F.3D. 125 (1994). "TO ACHIEVE FUNCTIONAL EQUIVALENCY, IT IS NOT ENOUGH THAT THE SENTENCING COURT ADDRESSES A DEFENDANT ON A PARTICULAR ISSUE (SEE U.S. V. WALKER, 896 F.2D. 295, 300-301 (1990)), AFFORDS COUNSEL THE OPPORTUNITY TO SPEAK (SEE U.S. V. POSNER, 868 F.2D. 720, 724 (1989)), OR HEARS THE DEFENDANT'S SPECIFIC OBJECTIONS TO THE PRESENTENCE REPORT (SEE U.S. V PHILLIPS, 936 F.2D. 1252, 1255-1256 (1991)). RATHER, THE COURT, THE PROSECUTOR, AND THE DEFENDANT MUST AT THE VERY LEAST INTERACT IN A MANNER THAT SHOWS CLEARLY AND CONVINCINGLY THAT THE DEFENDANT KNEW HE HAD A RIGHT TO SPEAK ON ANY SUBJECT OF HIS CHOOSING PRIOR TO THE IMPOSITION OF SENTENCE." DE ALBA PAGAN, AT 129.

AT THE PCR HEARING, PLEA COUNSEL WAS ASKED IF HE BELIEVED ANNOUNCING PETITIONER'S STATEMENT AFFECTED THE DISPOSITION OR OUTCOME OF THE CASE, TO WHICH HE REPLIED: "NOT AT ALL" (APP. 125, LL. 11-14). PERHAPS HE WAS THE WRONG PERSON TO ASK, GIVEN THE FACTS THAT: 1) HE HAD ONLY MET THE PETITIONER A WEEK PRIOR AND KNEW NOTHING ABOUT HIM, AND 2) HE WAS ADMITTEDLY IGNORANT ABOUT THE LENGTH OR CONTENT OF THE STATEMENT. HE ATTEMPTS TO JUSTIFY HIS DEFICIENT PERFORMANCE BY CLAIMING THAT, AT THE TIME IT WAS INTERRUPTED, PETITIONER'S STATEMENT WAS "ALMOST FIFTEEN TO TWENTY PAGES LONG ON THE TRANSCRIPT" (APP. 125, LL. 8-10). A QUICK GLANCE AT THE TRANSCRIPT REVEALS THIS TO BE THE LIE THAT IT IS (APP. 13 - APP. 21). AT THE TIME HIS RIGHT TO ALLOCUTION WAS VIOLATED BY BOTH THE COURT AND PLEA COUNSEL, THE TRANSCRIPT WAS EIGHT PAGES LONG. AFTER ALL, PETITIONER HAD JUST BEGUN SPEAKING. THE PLEA COUNSEL WAS CLEARLY DEFICIENT, AND THE PCR COURT ERRED WHEN IT FOUND OTHERWISE. THIS GROUND ALONE DEMANDS A REVERSAL.

ARGUMENTS: THE 'ALFORD' PLEA AND A DUPED PETITIONER

ON APRIL 9, 2012, PETITIONER ENTERED AN 'ALFORD' PLEA, BASED ON PLEA COUNSEL'S ASSERTION THAT DOING SO WOULD ALLOW PETITIONER, AT AN UNSPECIFIED TIME,

TO BECOME PAROLE ELIGIBLE, AND TO SEEK AN EARLY RELEASE UNDER THE TERMS OF SUCH A PAROLE. PETITIONER WAS NEVER GUARANTEED OR PROMISED PAROLE, BUT MERELY TOLD IT WAS "AVAILABLE", IF HE PLED, EITHER "GUILTY" OR UNDER 'ALFORD', BUT WOULD BE FORFEIT IF HE WENT TO TRIAL AND LOST. THIS PAROLE ELIGIBILITY FACTOR, AS FICTITIOUS AS IT TURNED OUT TO BE, WAS INSTRUMENTAL, TO THE NEAR-EXCLUSION OF ALL OTHER FACTORS, IN GETTING THE PETITIONER TO ACCEPT A PLEA HE DID NOT REALLY WANT. IN FACT, PETITIONER ALMOST FELT "GRATEFUL" TOWARDS THE PLEA COUNSEL BECAUSE HE THOUGHT HE HAD BEEN UPFRONT ABOUT HIS STRENGTHS/WEAKNESSES, WHAT LENGTHS HE WOULD/WOULD NOT GO TO PROVE PETITIONER'S CASE, THE 'FACETS' OF PETITIONER'S CHARGES (E.G. "VIOLENT"/"NONVIOLENT", "PAROLEABLE"/"NON-PAROLEABLE", ETC.). IT WAS TO BE A FULL YEAR BEFORE PETITIONER DISCOVERED HE WAS NOT PAROLE ELIGIBLE.

WHEN PLEA COUNSEL FIRST EXPLAINED TO PETITIONER THAT ENTERING A PLEA WOULD ALLOW FOR PAROLE ELIGIBILITY, HE SIMPLY BELIEVED IT TO BE A STATEMENT OF FACT OR LAW, AND NOT A "PROMISE". THE PCR COURT, IN ITS CHARACTERIZATION OF THIS AS A "PROMISE" (APP. 138), NOT ONLY ERRED, BUT SEEMINGLY ENGAGED IN A HIGHLY (INAPPROPRIATELY) PREJUDICIAL GAME OF 'SEMANTICS', APPARENTLY FOR THE SOLE PURPOSE OF DENYING THE PETITIONER RELIEF.

PRIOR TO HIS ALLOCUTION, PETITIONER'S PLEA COUNSEL MADE A VAGUE AND AMBIGUOUS REFERENCE TO THE MORE SERIOUS OF PETITIONER'S CHARGES: "TRAFFICKING." IN HIS UNINFORMED AND HALF-HEARTED ATTEMPT AT "MITIGATION", PLEA COUNSEL SAYS MERELY: "HE UNDERSTANDS THE CONSEQUENCES OF IT BEING VIOLENT AND THE NON-PAROLE. WE WENT OVER THAT..." (APP.12, LL. 6-8). AFTERWARDS, THE PLEA COURT NEVER ASKED IF PETITIONER WAS AWARE OR UNDERSTOOD "TRAFFICKING" WAS A NON-PAROLE OFFENSE, AND PLEA COUNSEL NEVER ATTEMPTED TO CLARIFY THAT AMBIGUOUS STATEMENT. WHEN THE PETITIONER HEARD IT, HE SIMPLY THOUGHT PLEA COUNSEL WAS INFORMING THE COURT ABOUT WHAT HE HAD TOLD PETITIONER: "TRAFFICKING" WAS A "VIOLENT" CRIME, AND NON-PAROLEABLE WITHOUT PLEADING. ALTHOUGH PLEA COUNSEL ATTEMPTED TO PORTRAY HIS 'BRIEFING' OF THE PETITIONER AS 'UNQUESTIONABLE' AT THE PCR HEARING (APP.124, LL.12-23; APP.127, LL.22-25 - APP.128, LL.1-4), HE (AFTER BEING ASKED IF HE HAD "ESSENTIALLY ADVISED" PETITIONER EXERCISING HIS RIGHT TO APPEAL WOULD POSSIBLY RESULT IN HIM BEING "PENALIZED" - APP.128, LL.2-7) GOES RIGHT BACK AND ADMITS: "... I SAID HE COULD BE GIVEN... SOMEWHAT OF A BREAK IF HE DECIDED TO ENTER HIS PLEA..." (APP.128, LL.9-11). ALTHOUGH THE PCR COURT FOUND NO "PROMISES" HAD BEEN, WHAT IS THIS BUT IRREFUTABLE PROOF, FROM PLEA COUNSEL'S OWN MOUTH, THAT SOMETHING WAS 'DANGLED' IN FRONT OF PETITION-

ER TO GET HIM TO CHANGE HIS PLEA, AFTER EIGHTEEN MONTHS OF INCARCERATION, ELEVEN MONTHS OF PLEA RESECTION, AND ONLY SEVEN DAYS OF PLEA COUNSEL. PCR COURT, WHEN IT FOUND PETITIONER WAS PROPERLY INFORMED, AND WAS MADE NO "PROMISES," ERRED. COUNSEL, BE IT TRIAL OR PLEA, ARE DEFICIENT WHEN THEY ARM THEIR CLIENTS WITH ERRONEOUS INFORMATION. SEE ALEXANDER V. STATE, 402 S.E.2D. 484 (S.C. 1991); RAY V. STATE, 401 S.E.2D. 151 (S.C. 1991); HINSON V. STATE, 377 S.E.2D. 338 (S.C. 1989). PETITIONER'S 'ALFORD' PLEA, AS SUCH, WAS NOT "KNOWINGLY" OR "INTELLIGENTLY" MADE, AND REQUIRES A REVERSAL. ALTHOUGH PLEA COUNSEL PRETENDED OTHERWISE, IT TOOK DECEPTION FOR A PLEA; PERJURY TO COVER IT UP.

ARGUMENTS: PERJURY BY THE PCR

THROUGHOUT HIS INCARCERATION AT G.C.D.C., PETITIONER WAS UNDER THE (MISTAKEN) IMPRESSION THAT A FEMALE AND WHITE CO-ARRESTEE, JOYCE EDWARDS, HAD BEEN CHARGED WITH THE SAME CRIMES AS HE, BEEN ASSIGNED THE SAME BAIL/BOND AMOUNT, YET APPEARED TO HAVE JUST WALKED AWAY, UNSCATHED, FROM HER CHARGES, ALL WITHOUT HER HAVING BEEN INVOLVED IN ANY TYPE OF DEAL MAKING, COOPERATION, ETC. PETITIONER BELIEVED EDWARDS TO HAVE BEEN ARRESTED / CHARGED BASED ON THE EVENTS OF OCT-

OBER 7, 2010, THE DATE FROM WHICH HIS CHARGES STEM; SOUTH CAROLINA'S COMMON LAW "HAND OF ONE, HAND TO ALL" DOCTRINE (AS SET FORTH IN STATE V. GREEN, 200 S.E.2D 74, 261 S.C. 366 (1973)); AND THE FACT THAT CERTAIN POLICE REPORTS, SUCH AS 'JOSEPH PARRISH'S' (TO PETITIONER'S 'UNTRAINED' EYE) APPEARED TO SHOW EQUAL CHARGES AND BAIL AMOUNTS FOR BOTH PETITIONER AND EDWARDS (APP. 88-89). UNKNOWN TO HIM, BECAUSE OF HIS MISREADING THE POLICE REPORTS, AND SOME OF THE REPORTS' VAGARIES, PETITIONER WAS COMPLETELY MISTAKEN IN HIS BELIEF EDWARDS HAD BEEN CHARGED, ONLY TO HAVE HER CHARGES "EVAPORATE" LATER (APP. 110, LL. 1-2). THIS BELIEF LED PETITIONER TO QUESTION WHETHER HE WAS BEING "SELECTIVELY" PROSECUTED, A QUESTION HE WANTED PLEA COUNSEL TO PURSUE (APP. 109, LL. 17-25 - APP. 110, LL. 1-3). HOWEVER, PLEA COUNSEL WAS UNWILLING TO PURSUE THIS 'INQUIRY.'

AT THE PCR HEARING, PLEA COUNSEL PAINTED A PERFECT PICTURE OF 'DUE DILIGENCE', CLAIMING HE HAD INVESTIGATED PETITIONER'S ALLEGATIONS AND CONCERNS, FINDING THAT EDWARDS WAS COOPERATING, IN EXCHANGE FOR "A SWEET DEAL" (APP. 122, LL. 7-8), "A BREAK" (APP. 122, LL. 9-11), OR "SOME KIND OF LENIENCY" (APP. 127, LL. 12-14). PROBLEM IS, THERE WAS NO NEED FOR EDWARDS TO CUT A DEAL — UNBEKNOWNST TO PETITIONER AND HIS PLEA COUNSEL, EDWARDS HAD NEVER BEEN CH-

ARGED WITH ANY CRIME. PETITIONER WAS MISTAKEN BECAUSE HE MISREAD THE POLICE REPORTS; PLEA COUNSEL WAS MISTAKEN BECAUSE HE NEVER BOTHERED TO READ THE POLICE REPORTS AT ALL. A QUICK 'SKIM' OF THE POLICE REPORTS SHOWS "SUBJ. #1" (EDWARDS) WAS MERELY CHARGED WITH BEING A "FUGITIVE" ON WARRANT NUMBER "1-483349". "SUBJ. #2" (PETITIONER) WAS CHARGED WITH "TRAFFICKING" ON WARRANT "1-483350" AND A "PWID" CHARGE ON WARRANT "1-483351". HAD PLEA COUNSEL SIMPLY READ THE REPORTS, THERE WOULD HAVE BEEN NO NEED FOR A TALE ABOUT EDWARDS AND "SWEET DEALS." HE COULD HAVE SEEN EDWARDS HAD NEVER BEEN CHARGED AND THEN QUESTIONED "WHY NOT?" AS IT WAS, PETITIONER DID NOT BECOME AWARE OF THIS FACT UNTIL AFTER THE PCR HEARING, WHEN HE CONTACTED EDWARDS HERSELF, AND LEARNED NO DEAL WAS NECESSARY BECAUSE SHE HAD NEVER BEEN CHARGED. THIS SORT OF 'REVELATION' SHOULD HAVE BEEN MADE BY PLEA COUNSEL — HAD HE NOT BEEN DEFICIENT. THIS PRIMA FACIE CLAIM OF FAILURE TO INVESTIGATE IS A GROUND FOR REVERSAL.

RESPECTFULLY SUBMITTED, THIS 2ND DAY OF FEBRUARY, 2015.

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