

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

MAR 13 2015

S.C. Supreme Court

Certiorari to Greenville County
Robin B. Stilwell, Circuit Court Judge

SAMUEL LAMONT WHITNER Petitioner

v.

THE DIVISION OF APPELLATE DEFENSE Defendant

THE OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA... Defendant

PETITIONER REPLY TO APPOINTED
COUNSEL'S RETURN TO PETITIONER'S MOTION TO
RELIEVE COUNSEL AND PROCEED PRO SE. [SIC]

APPELLATE CASE NO. 2014-001951

The Petitioner hereby move to reply to the appointed counsels Return
to the Petitioner's Motion to relieve counsel and proceed pro se.
[sic] ¹

STATEMENT OF THE FACTS

The Petitioner had filed a Motion of waiver of representation,
which was "consolidated" pursuant to rule 42 (a) S.C.R.C.P., with a
preliminary injunction pursuant to 65 (a) S.C.R.C.P., on the 19th day of
February 2015; in which the Petitioner had provided before this court
merit of why the Petitioner pray of this Honorable court to grant
injunctive relief, as well as to grant the Petitioner's request, that which
the Petitioner wish to waive representation per the Appellate defense.

The Petitioner's court appointed counsel, John H. Strom Esquire
had filed a "Return to the Petitioner's Motion for waiver" of representation,
on the 23rd day of February 2015, Appellate counsel Strom responds
as follows to the contents of Petitioner's "Motion of waiver of representation."
contending therein that, "[A]fter a review of Petitioner's motion and
the relevant case records, Appointed Counsel. John H. Strom Esquire

had determined that chief Appellate Defender Robert M Dudek is not a subject of Petitioner's P.C.R. Action...

(A) THE ISSUE. INEFFECTIVE ASSISTANCE
OF APPELLATE COUNSEL RAISED PER
THE PETITIONER within C/A No.: 2013-
- CP-23-00765

The Petitioner had filed for Post conviction Relief on the 8th day of February 2013. The state's return to the Petitioner's Post conviction relief application was clocked stamped per the court of common pleas on the 18th day of November 2013, which indicates therein that the issue of ineffective assistance of Appellate counsel, was indeed raised per se the Petitioner. see S.C. code ann §17-27-20. Likewise the Petitioner had filed a supplement of issues which is to be amended to the original Post conviction application, that which was clocked stamped per the court of common Pleas on the 17th day of February 2014. see S.C. code ann, §17-27-40 - §17-27-50, the issue concerning the ineffective assistance of Appellate counsel was raised therein as well., As provided per S.C. code ann §44-63-161 (2)....

Any person to willfully make a false statement
in a certificate record. or report required to be
filed by law or in a application for an amendment
to it or in an application for a certified copy of

1 The Petitioner had initiated before this Honorable court . . . a motion of waiver of representation consolidated pursuant to Rule 42 (a). S.C.R.C.P. with preliminary injunction pursuant to 65 (a) S.C.R.C.P. as the division of the Appellate Defense captioned as the defendant.

a vital record or to willfully supply false information intending that the information be used in the preparation of any report or amendment to it;

see S.C. Code ann § 44-63-161 (2). However, upon "John H. Strom Esq." determination, that chief Appellate defender, Robert M Dudek is not a [subject] of Petitioner's action is contrary to the Petitioner's Form 5 P.C.R. application and supplement, that was submitted to the court of common pleas per se the Petitioner, and provides that the law has been violated as prescribed of S.C. Code ann § 44-63-161 (2) thus in light of the relevant case records, that which John H Strom had based a determination from. The Petitioner respectfully concurs with a veracious fact that Appointed counsel is not the offender of S.C. code § 44-63-161 (2) (i.e. John H. Strom, Esq)

S.C.R.C.P Rule 77 (d) Notice of Orders or Judgment..

Again, the Petitioner had filed for Post conviction Relief on the 8th day of February 2013 C/A 2013-CP-23-00765. an evidentiary hearing was held on the 19th day of June 2014.

However, the Petitioner has not been served with a court order of disposition of the P.C.R proceeding, and which the Petitioner remains unserved..

Uniform Post conviction Procedure Act: S.C. code ann §17-27-10.

The Petitioner had pursued his P.C.R. remedies as a matter of right. see S.C. code ann § 17-27-90. The United state Supreme court

holds that "[a] statute that does not itself impinge on a protective substantive right will be struck down if it employs impermissible classification." see Harris v. McRae 448 U.S. 297, 321-325, 100 S.Ct 2671, 2692 65 L.E. 2d 784 (1980). The Petitioner had timely amended to his original application pro se. Moreover, the AUTHENTIC case records concerning the Petitioner's case provide that the Petitioner had so complied "per se", with the procedural norms that are prescribed per the Uniform Post conviction Procedure Act §17-27-10. Likewise the AUTHENTIC relevant case records regarding the Petitioner's Post conviction action C/A 2013-CP-23-00765 is void of showing that the petitioner had waived the raised ineffective assistance of Appellate counsel issue. The south Carolina Supreme Court held within State v. Arthur 296 S.C. 495, 374 S.E. 2d 291 (1998). that a waiver of a constitutional or a statutory right requires a showing on the record knowingly and intelligently. (citing the United State Supreme Court decision in Patton v. United States, 281 U.S. 276, 50 S.Ct 253, 74 LEd 854 (1930)).

SC Rule Ev. 201 Judicial Notice of Adjudicative Facts, (b) (f)

The Petitioner hereby request of this Honorable court to

-
2. The Petitioner remains unserved with a dispositional order regarding the Petitioner's Post conviction action C/A 2013-CP-23-00765

take judicial notice of correspondence that which is consolidated below thus for scrutiny of this Honorable court, and which the correspondences will provide proof that Petitioner had so had indeed raised a issue of ineffective assistance of Appellate counsel. The above said correspondences provides as follows...

As provided of Page. 6 of 24, of this motion is a November 18 2013 clocked stamped copy of the states RETURN to the Petitioner P.C.R application.

As provided of Page 8. of 24, of this motion is a February 17. 2014, clocked stamp copy of the Petitioner's pro se supplement of issue and Page. 11 of 24, provides that all parties had been served.

As provided of page. 12 of 24, of this motion is a February 19. 2014, correspondence from the Petitioner's initial court appointed P.C.R counsel validating the filing of the Petitioner's supplement of issues

As provided of Page. 13 of 24, of this motion is a pro se motion to address all issues filed before the court of common Pleas on the 9th day of July 2014.

As provided of Page. 15 of 24, of this motion is a July 9th 2014 correspondence to the Honorable Robin B. Stillwell and Page 20 of 24, provides that all had been served a copy...

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Samuel Lamont Whitner,)
S.C.D.C. No. 263066,)
)
Applicant,)
)
v.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-23-0765

State of South Carolina,)
)
Respondent.)

RETURN

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. MCKENSHIMER
2013 NOV 18 PM 2 54

In response to the post-conviction relief application filed February 8, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the February 2009 term of the Greenville County Grand Jury for first-degree criminal sexual conduct with a minor (2009-GS-23-1072). Christopher D. Scalzo, Esquire represented the Applicant.

After the State took the case to trial, the Applicant was found guilty. On November 4, 2009, the Honorable John C. Few sentenced the Applicant to thirty (30) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire perfected the appeal. The South Carolina Supreme Court affirmed the Applicant's conviction and sentence on July 11, 2012. State v. Whitner, 399 S.C. 547, 732 S.E.2d 861 (2012). The Remittitur was sent on July 27, 2012.

Attached herewith and incorporated herein by reference are the records of the Greenville

appt. atty

County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, trial transcript, and the appellate records.

II.

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

1. Ineffective assistance of trial counsel.
 - a. "Trial counsel acted jointly in concert with the State and illegally gain jurisdiction of the South Carolina Court of Appeals/6 amendment violation."
2. Ineffective assistance of appellate counsel.
 - a. "Appellate counsel failed to challenge this jurisdictional defect."

III.

The Respondent asserts the Applicant's allegations that his attorney was ineffective are without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386

(Exhibit X)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	
)	
SAMUEL LAMONT WHITNER,)	CASE NO.: <u>2013-CP-23-00765</u>
Applicant,)	'SUPPLEMENT OF ISSUES TO THE
Vs.)	ABOVE CITED CIVIL POST
)	CONVICTION RELIEF '
STATE OF SOUTH CAROLINA,)	
Respondant.)	
)	

CIVIL POST
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 2013 FEB 17 AM 11:33

The applicant was Indicted for a single count of Criminal Sexual Conduct First (1st) Degree under Case No.: 09-68-23-1072 and applicant was originally called to trial on said offense on 11, March, 2009, before the Honorable; C. Victor Pyle, Jr. and was represented by Christopher D. Scalzo, Esq. of the Public Defenders Office. Christy Kednocker Sustakovitch represented the State of South Carolina as Solicitor.

'PROCEDURAL HISTORY'

Within the original initiating proceedings before the Honorable; C. Victor Pyle, Jr., held on 11, March, 2009 the Solicitor (Sustakovitch), attempted to offer into evidence a 'Surreptitious' recording of an 5, August, 2007 telephone conversation between the applicant (Whitner) and his daughter, see: Exhibit 'A', Transcript pages 17-23. The states 'Motion to Admit' the recording was subsequently 'Denied' by the Honorable; C. Victor Pyle, Jr., see: Exhibit 'A', Tr. Pg. 23.

The state then moved for a 'interlocutory Appeal' of the Trial Courts Denial of [its] 'Motion to Admi[t] the 5, August, 2007 intercepted telephone conversation, see: Exhibit 'A', tr. Pg. 26. Upon the jury not being sworn in.... when the state moved for this appeal *1), and the trial was disallowed to continue.

*1)-It was held within 'State Vs. Thomas, 269 S.E. 2d 768 neither party addressed the threshold issue of 'appealability' of the Order. However, also determined by

ISSUES RAISED IN THE ORIGINAL P. C. R.
CASE NO.: 2013-CP-23-00765 APPLICATION

The applicant had submitted his Post Conviction Relief application before the Court of Common Pleas on 8, february. 2013, in which the following issues where thereby raised:

- 1) Ineffective Assistance of Trial Counsel; Trial counsel acted jointly and in concert with the state and illegally gained jurisdiction of the South Carolina Court of Appeals / Sixth (6th) Amendment Violation;
- 2) Appellate Counsel failed to challenge this jurisdictional defect. Ineffective Assistance of Appellate Counsel.

The applicant has hereby respectfully requested that his post Conviction Relief Counsel amend as follows these issues into the original Post Conviction Relief Application on his behalf pursuant to S.C.R.C.P. 71.1(d) and hereby has advised counsel to raise verbatim the herein listed issues to applicants original P.C.R. application pursuant to S.C.R.C.P. 71.1(e).

REQUESTED AMENDMENTS FOR ISSUES TO ORIGINAL
P. C. R. CASE NO.: 2013-CP-23-00765 APPLICATION

A) Trial counsel was ineffective in not contemporaneously objecting to testimonies offered per Greenville County Detective; Bobby Bradford within the Jackson Vs. Deno Hearing before the Honorable; C. Victor Pyle, Jr., when the detective disclosed the contents of the surreptitious taped conversation between the applicant and his daughter. Trial counsel failed to 'preserve' the record on appeal that the State as well as Law Enforcement had violated the 'Wire-Tap Statute', S.C. Code Ann §§ 17-30-20, S.C. Constitution Article 1 § 10.

B) Trial counsel had rendered Ineffective Assistance of Counsel in not objecting contemporaneously-in which to apprise the trial

However, upon the Solicitors Appealing before the South Carolina State Court of Appeals, the Solicitor representing the State 'fabricated' a chonology that in which the State was appealing the Honorable; C. Victor Pyle's Order granting a 'Motion to Suppress'... prior to.... the fact that a 'Motion to Suppress'... not been raised or ruled upon, see: Exhibit 'G', Exhibit 'A', Pgs. 17-23.

In the Trial Transcripts of said proceedings before the Honorable; C. Victor Pyle, Jr., it provides that a ruling on the evidence within this trial proceedings derived from only one (1) [Motion] which was raised by the State concerning the 'taped' [conversation] which brought about [it's] suppression by the 'Order of Denial' rendered by the Honorable; C. Victor Pyle, Jr., see: Exhibit 'A', Pgs. 17-23.

A 'Motion to Suppress' was 'fabricated' upon the Solicitor filing an appeal, see: Exhibit 'G', and this therefore set forth a finding that the solicitors conduct moves '**Beyond Prosecutorial Misconduct**'. The Solicitor did implement a '**Perjured Testimony**' and '**Illegally Gained**' jurisdiction within the south Carolina Court of Appeals.

The Solicitor, '**Illegally Suppressed**' a chonology regarding a initially raised 'Motion' to admit the conversation, see: Exhibit 'A' . Pgs. 17-23 and '**Intentionally Failed**' to disclose this chonology before the South Carolina Court of Appeals and surrogated a 'fabricated' chonology of a 'Motion' to suppress, 'fabricating' its existence before said court, see: Exhibit 'G'.

*1-Continued)

the Thomas Court; when a case is called for trial and a jury selected, but, Not Sworn; upon evidence being suppressed. The Solicitor Does Not Enjoy the Privilege to elect Not To Proceed with the case Pending Appeal of an issue to the Supreme Court, because the Order-AS IT STANDS- is interlocutory, thus Not Subject to an Immediate Appeal.

Wherefore the applicant does hereby advise and instruct Post Conviction Relief Counsel pursuant to Rule 71.1(d) to amend above issues.

Submitted this 10th day of January, 2014 does the undersigned applicant,

Samuel Lamont Whitner
Samuel Lamont Whitner #263066

SWORN AND AFFIRMED before me as a **LAWFUL** document this 10th day of January, 2014 as a Notary of the Public for the State of South Carolina, and now **IS** a lawful request. Copies have been provided to the below listed as required by law.

CERTIFICATE OF SERVICE

1) Paul B. Wickensimer

Clerk of Courts/Greenville County. S.C. (2 R. MILLS, Arvill Jr Esq.
Greenville County Judicial Center 11 North Irvine Street
305 East North Street Suite 11 Greenville S.C.
Greenville, S.C. 29601 29601

Samuel Lamont Whitner
Samuel Lamont Whitner #263066
B.R.C.E MLT 1043
4460 Broad River Road
Columbia S.C. 29210

s/ Susan H. Drye
Notary/Signature/Seal

My Commission Expires
March 5, 2015
My commission expires:

(3) Karen C Ratigan Esq
office of Attorney General
of the State of South Carolina
Rembert C. Dennis Building
P.O. Box 11549

R. MILLS ARIAIL, JR.
ATTORNEY AT LAW

11 NORTH IRVINE STREET, SUITE 11 • GREENVILLE, SC 29601
PHONE 864.232.9390 • FAX 864.232.9392 • E-MAIL MILLS@RMALAWOFFICE.COM

February 19, 2014

Samuel L. Whitner #00263066
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

RE: Samuel L. Whitner vs. State of South Carolina
Case Number: 2013-DR-23-00765

Dear Mr. Whitner:

Enclosed please find a copy of the ~~filed copy of~~ your Supplement of Issues for your Post Conviction Relief matter. If you have any questions, please do not hesitate to write my office.

Thank you for your consideration of this letter.

With kind regards,

LAW OFFICE OF R. MILLS ARIAIL, JR.



R. Mills Ariail, Jr.

RMA/dl

State of South Carolina

County of Greenville

Samuel Lamont Whitner,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

Case No.: 2013-CP-23-00765

MOTION TO ADDRESS ALL ISSUES
PURSUANT TO SUPPLEMENT OF
ISSUES

&

ATTACHMENTS IN SUPPORT OF THE
AMENDMENT OF ISSUES

Now comes the Applicant, Samuel Lamont Whitner, by and through his Court appointed attorney, who ask this Honorable Court to require the attorneys involved in this Post-Conviction Relief Action and any Amendment thereof to be meticulous in the preparation of any "Order" prepared in this matter.

Specifically, the Applicant requests that each and every issue within the Post-Conviction Relief Application and any Amendment thereof, at the hearing, be addressed in the "Order" of the Court to be issued at the conclusion of the Evidentiary Hearing in this matter.

The Applicant request this Motion pursuant to S.C. Code §17-27-80. Citing, Pruitt v. State, 423 S.E.2d 127 (1992); Byron v. State, 493 S.E.2d 500 (1997).

Wherefore, Applicant request the Motion be granted As the record remains open until the 19th day of July 2014, as so ordered by the Court.

SWORN AND SUBSCRIBED TO BEFORE ME
THIS 9th DAY OF July, 2014

ASusan N. Frye
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: March 8, 2018

Samuel L. Whitner

Samuel Lamont Whitner
B.R.C.I. Wat.
4460 Broad River Rd.
Columbia, S.C. 29210

THE Honorable Robin B. Stilwell
Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, S.C. 29601-2185

RE: Samuel L. Whitner v. THE STATE
Case No. 2013-CP-23-00765 violation pursuant to
407 professional conduct Rule 1.4. 3.1. 3.4
invalid waiver pursuant to S.C. Code Ann. 17-27-90

I, the Applicant, respectfully apprise the court of a concern of a certain occurrence which took place within my post conviction relief hearing, which had convened on the 19th day of June 2014, which therein your honor had ordered and allowed the record to remain open within a limitation of thirty days from the initial day that which the P.C.R. hearing had convened.

However, I appeal to this Honorable Court to respectfully implore the Courts indulgence upon myself forwarding this correspondence directly to this Honorable Court; and in furtherance, I offer my assurance to this Court that this correspondence had not been forwarded to this Court for purposes for illegitimacy; which is setforth by law as a ex-parte communication. However, enclosed with this correspondence is a certificate of service certifying that the parties involved have been served with a copy of this correspondence, if the adverse parties (i.e. the respondent) wishes to respond in opposition to my forwarding of this correspondence to the Court.

This correspondence is sent to "apprise" the Court that I , the Applicant, had not consented nor was I made aware that the Appellate counsel was excused of his obligation or requirement to be present within my P.C.R. hearing on that 19th day of June 2014. P.C.R. counsel,

esq. Caroline M. Horlbeck, did not inform me of her method to relieve the Appellate counsel of his presence until the day of the P.C.R. hearing, that 19th day of June 2014. And which I did not waive nor move to waive any issue that "I" had raised within my P.C.R. application and supplement. See pages 1-25 of the supplement of issues , Exhibit x.

Moreso, the P.C.R. counsel's objective upon making this decision to relieve the Appellate counsel of his presence with the P.C.R. hearing without first consulting with the Applicant is a direct violation of 407 professional conduct Rule 1.4. (a)(1)(2)(3)(4)(5)(b). 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. Case no. 2013-CP-23-00765. The Applicant had not been inquired per the P.C.R. court if the Applicant had verbally consented to the P.C.R. counsel's decision to waive the Appellate counsel's presence from within his P.C.R hearing. Which to provide the assurance if a valid waiver of issue had been made pursuant to S.C. Code Ann. § 17-27-90 on the record.

The P.C.R. counsel's decision to excuse the Appellate counsel's presence from within his P.C.R. hearing that 19th day of June 2014, treads upon the Applicant's due process which the P.C.R. counsel's decision estoppels the Applicant from having the chance to present the evidence and argument regarding his claim of ineffective assistance of Appellate counsel despite of one or more existing adjudication of the identical issue; This stands squarely against my position. See Robert v. Recovery Bureau Inc. , 316 S.C. App. 1994 450 SE2d 616 also see South Carolina Dept. of Labor Licensing

And Regulation v. Girgis, 503 S.E.2d 490 (S.C. App. 1998). The Applicant must meet the burden to prove the allegation in the Applicant's application. See Matthews v. State, 565 S.E.2d 766.

Moresoever, specific issues were not addressed, because the Appellate counsel was not present and testimonies from the appellate counsel need to be offered to the Court, which to provide the Court with evidence, and an explanation with regards to the South Carolina Supreme Court; Upon affirmation, the Applicant's conviction and sentence thus stating within its order that: "[S]everal days later, mother consented to stepfather recording a telephone conversation between the victim and Appellant [without the victim's knowledge or consent.]" * See State v. Whitner, 399 S.C. 547 732 S.E.2d 861. Appellate counsel, Esq. Robert M. Dudek had filed to the South Carolina Supreme Court a final brief of Appellant on the Applicant's behalf. Moreso, within the final brief, the Appellate counsel apprises the Supreme Court that I, the Applicant was unaware; thus did not know that the stepfather and the Applicant's daughter's mother had recorded the conversation between the Applicant and his daughter. See THE FINAL BRIEF OF THE APPELLANT, page 46; Also see supplement of issues (EXHIBIT X) pages 1-25. Appellate counsel had proffered testimonies offered per the Applicant's daughter's mother within the Court of Appeal, which these testimonies corroborates that

* The final brief of the Appellant before the supreme court had presented clear and convincing evidence that he did not know that the mother surreptitiously recorded his conversation with his daughter. This violated the wire tap statue. See 18 U.S.C. 2515 and S.C. Code Ann. § 17-30-65 and § 17-30-105. See Thompson v. Dulaney CA. 10 (Utah) 1992 970 F.2d 744 also cited at 838 F.Supp. 1535, 139 ALR Fed. 765. Appellate counsel was ineffective by not challenging the Court of Appeal's jurisdiction to entertain the states interlocutory appeal pursuant to S.C. Code Ann. § 17-30-110 (A). The

law had been violated pursuant to S.C. Code Ann. § 17-30-65, 18 U.S.C. 2515. See Exhibit B, Page 18 Ln 10 - 17.

Appellate counsel had failed to challenge this jurisdictional defect. See issue raised in the Applicant's P.C.R. application and supplement, Exhibit x page 23.

Generally, the Appellate counsel testimony is mandatory to be made before this Court which to allow the Court to make specific finding of fact and state expressly its conclusion of law relating to each issue presented pursuant to S.C. 17-27-80.

WHEREFORE, the Applicant hereby respectfully pray to the Court to consider a remedy to this serious potential delay or error which is provoked per the Applicant's P.C.R. counsel's method or decision, that is prohibited pursuant to 407 professional conduct Rule 1.4., 3.1., 3.4.

The Applicant hereby respectfully request that the Court consider portion of the initial brief of the Appellate which said brief was filed before the S.C. Supreme Court on the 23rd day of June 2011 (page 46 and 15) as evidence along with portion of the transcript of the suppression hearing before the South Carolina Court of Appeals. (Exhibit B) Pg. 18 Line 10 - 17. Thus to provide before this Court that the Applicant's conversation with his daughter had been illegally surreptitiously intercepted, which the interception violated the

* Applicant attest that the Applicant had so raised the issue within his P.C.R. application and requested that his P.C.R. counsel to amend all issues raised. See Supplement of issues (Exhibit x), page 3; also see page 25), and in furtherance would have apprise the Supreme Court that Artical 1 § 10 of S.C. Const. and U.S.C.A. 4th Amendment is violated.

Applicant's civil right pursuant to U.S.C.A. 4th, 5th, and 6th Amendments and Artical 1 § 3, 1 § 10, and 1 § 12 of South Carolina Constitution. Lastly, the Applicant contends before the Court herein this correspondence that the Applicant be allowed to lawfully complete a prima facie showing which the Applicant may fairly substantiate the ineffective assistance of both trial counsel as well as Appellate counsel, that which the Appellate counsel presents within the P.C.R. hearing is required. The Applicant moves to lawfully amend this request being as the P.C.R. record remain open until the 19th day of July 2014, as so ordered by the Court.

Respectfully requested.



Samuel Lamont Whitner
B.R.C.I. Wat. 143
4460 Broad River Road
Columbia, S.C. 29210

SWORN AND SUBSCRIBED TO BEFORE ME
THIS 9th DAY OF July 2014



NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES My Commission Expires
March 3, 2018

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

SAMUEL L. WHITNER,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

) IN THE COURT OF COMMON PLEAS

) Case No.: 2013-CP-23-00765

) CERTIFICATE OF SERVICE

I, the above listed Applicant, hereby certify that I have forwarded a correspondence titled: Samuel Lamont Whitner v. The State, Case No.: 2013-CP-23-00765, Violation Pursuant to 407 Professional Conduct Rule 1.4., 3.1, & 3.4., Invalid Waiver Pursuant to S.C. Code Ann. § 17-27-90; addressed to The Honorable Robin B. Stilwel, at the Greenville County Courthouse, 305 East North Street, suite 325, Greenville, S.C. 29601-2185, and has deposited a copy in the U.S. Mail on the _____ day of _____ 2014 and hereby certify that all parties have been served with the same.

Esq. Caroline M. Horlbeck
101 Whitsett st.
Greenville, S.C. 29601



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

SWORN AND SUBSCRIBED TO BEFORE ME
THIS 14th DAY OF July 2014



NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: _____

Commission Expires
March 5, 2018

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

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

May 6, 2014

RE: Samuel L. Whitner v. The State of South Carolina,
Case No.: 2013-CP-23-00765,
Assurance From Counsel of requested filing of evidence
pursuant to S.C. code Ann. §17-27-50

Within response to your April 11, 2014 correspondence, in which you had stated that you are "waiting on my trial transcript", but however, because of your April 1, correspondence; it did so provide to my notion of why were you as my counsel, unhesitant to proceed with the scheduled P.C.R. hearing for reasons that...(1) your April 1, 2014 correspondence had initially introduced you to me, that you are the court reappointed P.C.R. counsel whom was assigned by the court to represent me; Upon my receiving your April 1, 2014 correspondence, "I was then made aware that you are my P.C.R. counsel"... (2). It is alarming that because of your statement within your April 11, 2014 correspondence (i.e. that you are waiting for my trial transcript.), this did so provide my notion with puzzling distraught of why were you not reluctant to proceed with representation within the previous scheduled P.C.R. hearing that which was set for the 24th day of April 2014; being as ~~that~~ you would have not been prepared to proceed.

However, it is required pursuant to 407 professional conduct Rule 1.1 that it is a necessity that you, as my lawyer, are to be competent in handling the particularities that were set forth within my P.C.R. application and supplement in support of the application. More so, there is a matter of assurance that needs to be confirmed by you concerning my April 8, 2014 correspondence that in which I had respectfully advised you to file the evidence that supports the supplements of issues these evidence that was

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forwarded to you on the 8th day of April 2014 supports the supplement which supports my P.C.R. application.

However, you have not yet informed me that you have filed the evidence that I had respectfully requested of you to do so Ms. Horlbeck. I respectfully ask that you, as my court reappointed P.C.R. counsel, award me first that it is confident that my P.C.R. application and supplement, as well as the evidence that supports the supplement, is so adequately before the P.C.R. court prior to my P.C.R. hearing pursuant to S.C. 17-27-50* as well as the 10 attachments that were forwarded to you for filing.

Thank you.

SWORN and subscribed to before me
this 6th day of May 2014

Susan H. Drye
Notary Public for South Carolina

My Commission Expires _____ Commission Expires
March 5, 2018

Samuel L. Whitner
Samuel L. Whitner
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, S.C. 29201

* Enclosed with this correspondence is the attachment that was forwarded with the April 8, 2014 correspondence which list attachments as Exhibits; which are titled as: ATTACHMENTS IN SUPPORT OF THE AMENDMENT OF ISSUES TO THE ABOVE CITED CIVIL POST CONVICTION RELIEF, (See Exhibit:R) These 10 attachments were also sent to the court reappointed counsel Esquire Caroline M. Horlbeck as enclosed within the Applicant's April 8, 2014 correspondence respectfully advising Ms. Horlbeck to file the attachment as evidence pursuant to S.C. Code Ann. §17-27-50.

These 10 attachments are enclosed with this correspondence for the assurance that they are adequately before the P.C.R. court prior to my P.C.R. hearing.

STATE OF SOUTH CAROLINA)
County of Greenville)

Samuel Lamont Whitner)
Applicant,)

v.)

THE STATE OF SOUTH CAROLINA)
Respondent.)

IN THE COURT OF COMMON PLEAS
Case No.: 2013-cp-23-00765

PROOF OF SERVICE

I, the above listed Applicant, hereby certify that I have forwarded a correspondence titled: Samuel L. Whitner v. The State of South Carolina, case no.: 2013-cp-~~00~~²³-00765: Assurance From Counsel of Requested Filing of Evidence, pursuant to S.C. code Ann. §17-27-50, addressed to: Caroline M. Horlbeck at 101 Whitsett St. Greenville, S.C. 29601 on the 6 day of May 2014 and certify that all below listed parties have been served the same.

The Honorable Letitia H. Verdin
305 East North Street
Greenville, S.C. 29601

Karen C. Ratigan
Office of the Attorney General
of the State of South Carolina
Rembert C. Dennis Building
P.O. Box 11549
Columbia, S.C. 29211

SWORN and subscribed to before me
this 6th day of May 2014
Susan H. Frye
Notary Public For South Carolina
My Commission Expires _____

Samuel Lamont Whitner
Samuel L. Whitner
Broad River Corr. Inst.
4460 Broad River Rd.
Columbia, S.C. 29201

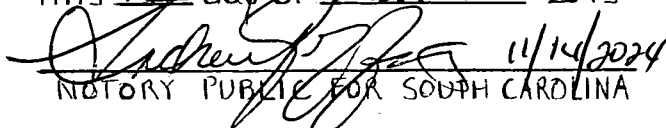
My Commission Expires
March 5, 2018

WHEREFORE the Petitioner pray of this Honorable court to grant injunctive relief that relates to the Petitioner's PRO SE MOTION OF WAIVER OF REPRESENTATION CONSOLIDATED PURSUANT TO RULE 42(a). SCRPC WITH PRELIMINARY INJUNCTION PURSUANT TO 65(a) SCRPC.

Respectfully submitted

Sworn to and subscribed before me:

THIS 10th day of March 2015


NOTARY PUBLIC FOR SOUTH CAROLINA



SAMUEL LAMONT WHITNER

B.R.C.I WAT 143

Broad River correctional Inst

4460 Broad river road

Columbia S.C. 29210

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

Robin B. Stillwell, Circuit Court Judge

2014-001951

SAMUEL LAMONT WHITNER.....Petitioner

v.

THE DIVISION OF APPELLATE DEFENSE.....Defendant

THE OFFICE OF THE ATTORNEY GENERAL OF SOUTH CAROLINA...Defendant

CERTIFICATE OF SERVICE

I the above listed Petitioner hereby certify that a Reply to appointed counsel's return to Petitioner's Motion to relieve counsel and proceed pro se. has been submitted on the 10th day of March 2015 addressed to The Supreme Court of South Carolina P.O. Box 11330 Columbia South Carolina 29211. and certify that the parties listed below has served the same.

Karen Ratigan Esquire
Office of the Attorney General
at Rembert Dennis Building
1000 Assembly street. Room
519. Columbia S.C. 29201

John H. Strom Esquire
Appellate Defender
1330 Lady street, Suite 401
Columbia. S.C 29201

sworn to and subscribed before me
THIS 10th day of March 2015

Notary Signature
NOTARY PUBLIC FOR SOUTH CAROLINA
11/14/24

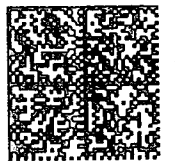
Samuel Lamont Whitner

LEGAL MAIL

Samuel Lamont Whitner #263066
B.R.C.I WAT 143
4960 Broad River Road
Columbia S.C. 29210

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