RECEIVED
JUN 15 2015
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

Robert Mitchell, ... Petitioner,

v.

State of south Carolina, ... Respondent.

Appellate Case No. 2015-000890

PETITION FOR REHEARING
PURSUANT TO S.C.A.C.R. RULE 240(j)

Robert Mitchell
Robert Mitchell
B.R.C.I. Murray Dorm 261
4460 Broad River Road
Columbia, S.C. 29210

Date: June 12 2015

The Petitioner files this Petition for rehearing pursuant to S.C.A.C.R. Rule 240(j) requesting a review of the order issued by the individual Justice Jean Toal, date June 2, 2015. This order issued by the individual Justice Jean Toal specifically "prohibits" Petitioner from filing any further collateral actions in the circuit court, including PCR actions and habeas corpus actions, challenging his 1997 convictions and sentences for murder, petit larceny and grand larceny without first obtaining permission to do so from this Court." This is a drastic prohibition issued by this individual Justice Jean Toal, and is an unprecedented prohibition and restriction upon Petitioner that is not warranted by the facts of this case nor any legal principle of South Carolina's jurisprudence. The Petitioner demonstrates the following showing which requires this Court to grant this rehearing and to vacate this unwarranted prohibition sanction:

1) As a factual matter, none of the Petitioner Robert Mitchell 's filings have been deemed "repetitive," "abusive," "numerous," "contemptuous," nor "totally frivolous" in any of South Carolina's lower courts or higher courts, including this Supreme Court of South Carolina. This individual Justice Jean Toal did not deem the Petitioner's filings as such before issuing the blanket prohibitive order.

2) The South Carolinian jurisprudence requires a court to make a fact finding showing that the filings of a petit-

ioner rises to the level of repetitive and abusive filing as in In re Maxton before a court levies prohibitive sanctions restricting a petitioner's filing. No South Carolina lower court nor higher court, including this Supreme Court of South Carolina, ever undertook a fact finding examination on this point nor has ever issued a fact finding determination concluding the Petitioner's filings are abusive and repetitive pursuant to In re Maxton. The individual Justice Jean Toal did not undertake this fact finding examination nor make a fact finding conclusion on this point before issuing the blanket prohibitive order. (See: In re Maxton, 478 S.E.2d 679 (S.C. 1996); Lakes v. State, 333 S.C. 382, 510 S.E.2d 228 (Ct. App. 1998); Williams v. State, 583 S.E.2d 52 (S.C.).)

3) The blanket prohibition which bars any and all further collateral actions in the circuit court, including PCR actions and habeas corpus actions without first obtaining permission to do so from this Supreme Court is an unprecedented prohibition, the first of its kind ordered by this Court. This order is harsh, unwarranted and it is an usurpation of the constitutional authority of the Supreme court of South Carolina's power vested within it by the South carolina Constitution and the United States Constitution, which directly violates the Petitioner's First Amendment rights, Fifth Amendment rights, Eighth Amendment rights and Fourteenth Amendment rights of the U.S. Constitution.

The S.C. Code of Law §17-17-10 entitles its citizens the access to use the writ of habeas corpus. The Petitioner

qualifies as a "person" entitled to use 17-17-10 if he options to do so. The S.C. legislators have authored this statute to provide the Petitioner this avenue of litigation. The S.C. Supreme Court Judge Toal's blanket order prohibiting the Petitioner's use of the writ of habeas corpus at all in the circuit court absent the permission of the S.C. Supreme Court effectively nullifies the entitlement the S.C. legislatures have given the Petitioner through this statute, making Toal's order an usurpation of the legislative branch's power by the judicial branch. The judicial branch has no authority to outright ban the writ of habeas corpus to the circuit court to any South Carolina citizen. What Toal's prohibitive order effectively does is equate the writ of habeas corpus to the circuit court to a writ of habeas in the original jurisdiction of the Supreme Court because, under the prohibitive order, both now require the prima facie approval from the Supreme Court before Petitioner's habeas filing will be accepted and totally excludes the authority of the circuit judge to consider Petitioner's habeas filing exclusive of the Supreme Court's reluctance to accept the habeas filing. This is usurpation and it is prohibited. (See S.C. Constitution Art. III, §1.)

4) The individual Justice Toal's prohibitive order is selective and discriminatory towards the Petitioner, because he alleges improprieties by Judge Toal's colleague, Justice Pleicones, and it is because of this fact that the order is so harsh and unprecedented and is not based on any fact finding

that the Petitioner engaged in any repetitive, abusive and contemptuous behavior that warrants this prohibition by the S.C. Supreme Court.

Theron Maxton, the petitioner in In re Maxton, 478 S.E.2d 679, filed sixty-four (64) pro se petitions over the span of three (3) years including forty-six (46) within one calendar year. The Supreme Court made a fact finding that each petition submitted by Maxton has been frivolous, repetitive and wasted the Supreme Court's time and resources. Maxton's punishment: Maxton will be required to pay $25 filing fee and is required to submit an affidavit of good faith before filing future petitions to the courts.

Curtis Lakes, the appellant in Lakes v. State, 510 S.E.2d 228, filed one (1) direct appeal, three (3) applications, two (2) petitions for writ of certiorari, a federal habeas corpus petition, and numerous other petitions for writs of mandamus, attorney grievances, and proposed orders for release. The S.C. Court of Appeals stated, "the trial judge failed to make factual findings to show the requests rise to the level of repetitive and abusive filings as in Maxton or those cases cited in Maxton." (See Lakes v. State, 510 S.E.2d at 230.) Lakes' punishment: Lakes will be required to pay filing fee in circuit court; the S.C. Court of Appeals reversed and remanded ordering Lakes proceed in forma pauperis on his filed writ of habeas corpus to circuit court.

John H. Williams, the petitioner in Williams v. State, 583 S.E.2d 52, filed four (4) pcr actions. The circuit court made

a fact finding that Williams' pcr filings were repetitive and abusive pursuant to In re Maxton, and issued an order to the Georgetown County Clerk of Court to not accept any further applications from Williams. Williams' punishment: Williams will be required to pay the $70 filing fee and is required to file an accompanying affidavit certifying his good faith belief that the PCR action is "nonfrivolous and proper." Additionally, Williams is warned that any continued frivolous PCR filing may result in contempt or sanction which include but are not limited to the forfeiture of all earned work, education and good time credit. The S.C. Supreme Court disagreed Williams' filings were repetitive and numerous, specifically stating, "petitioner's four applications for PCR are much fewer than Maxton's filings, and even significantly fewer than those of Lakes." (See Williams v. State, 583 S.E.2d at 53.) The Supreme Court then went on to VACATE the order restricting Williams' filings to the circuit court.

The prohibitions the individual Justice Toal's order places on the Petitioner is disproportionately harsher than historical prohibitions and restrictions placed on worse positioned petitioners as evidenced by Maxton, Lakes and Williams. There are absolutely no facts of Petitioner abusing his filing priviledges and, therefore, there is absolutely no basis upon which to substantiate the need to prohibit and restrain the Petitioner to collaterally attack his underlying grievances, except one... to protect a colleague's stature. But this can't be, and is not, a valid grounds to hamper

Petitioner's ability to air his grievances in the court system.

The Justice Pleicones, with the state solicitor and the trial counsel, discriminated against the Petitioner because of his health status, and this discrimination infected Petitioner's entire judicial process such that he was denied a fair judicial process guaranteed to all American citizens. To some minds, it is understandable that your colleague Pleicones weighted his views and perceptions of right and wrong through the time capsule lens of the mid - 1990's societal norms of fear and apprehension of persons with H.I.V. and A.I.D.S. syndromes, but it is still not excusable. A wrong is a wrong. This Petitioner urges this Court to consider that today's societal norms rejects discrimination and the abhorrent behavior discrimination breeds, because a wrong is a wrong, and the passage of time does not always cover and bury past misdeeds. Many times, the passage of time will illuminate the misdeeds and shine light on the soiled hands of the perpetrators. It is at these moments of illumination that society galvanizes with full force and with its full resources to mend that which was broken and to restore that which was spoiled. This Petitioner was wronged by the very individual who oathed to protect the integrity of the judicial process, because societal norms in the mid - 1990s encouraged Judge Pleicones, the state prosecutor and trial counsels Benningfield and Fryar to discriminate, alienate and cast aside persons whose health status are H.I.V. posi-

tive or had the A.I.D.S. diesease. The Petitioner presses this Court to at all times recognize a wrong is a wrong; time did not bury this... time has illuminated it. The Petitioner has an absolute right, fundamentally rooted, to use all available mechanisms where persons who have suffered a wrong under such discrimination may be recompensed for their wrong in an unbiased and fair forum before the courts of these United States of America.

WHEREFORE, the Petitioner prays this Court grant rehearing on the individual Justice Toal's order; this case warrants it.

Robert Mitchell

Robert Mitchell

4460 Broad River Rd.
Columbia, S.C. 29210

Date: June 12, 2015

State of South Carolina
County of Barnwell

Robert Mitchell, # 140920
Plaintiff

V.

State of South Carolina
Defendant

Case No. 2015-000890

LEGAL MAIL

CERTIFICATE OF SERVICE

I, Robert Mitchell, do here by certify that I have served two (2) copies of "Petition For Rehearing pursuant to S.C.A.R. Rule 240 (j) to the South Carolina General's office and upon the Supreme Court of South Carolina Daniel E. Shearouse, clerk of court by depositin [redacted] true copies, postage pre-paid in the U.S. Mail via Broad River prison mailroom personnel on June 12 2015, address to the following:

1) South Carolina General's office
Post office Box 11549
Columbia, S.C. 29211

2) The Supreme Court of South Carolina
Daniel E. Shearouse, clerk of court
Post office Box 11330
Columbia, S.C. 29211

SWORN AND SUBSCRIBED BEFORE ME
THIS 24th DAY OF June 2015.

Judson N. Frye
NOTARY PUBLIC FOR SOUTH CAROLINA

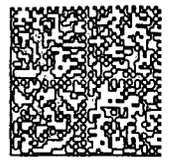
My Commission Expires
March 5, 2018

MY COMMISSION EXPIRES: _____

Robert Mitchell
Robert Mitchell # 140920
B.R.C.I. / Murray 261
4460 Broad River Rd.
Columbia, S.C. 29210

LEGAL MAIL

Robert Mitchell 140920
B.R.C.I. / Murray 261
4460 Broad River Rd.
Columbia, S.C. 29210



UNITED STATES POSTAGE
PITNEY BOWES
02 1M $ 01.42⁰
0008003534 JUN 12 2015
MAILED FROM ZIP CODE 29210

The Supreme Court of South Carolina
Daniel E. Shearouse, clerk of court
Post Office Box 11330
Columbia, S.C. 29211

RECEIVED
JUN 12 2015
BRCI
MAILROOM

LEGAL MAIL