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JUN 29 2015

S.C. SUPREME COURT

The Supreme Court of South Carolina
Clerk of Court
P.O. Box 11330
Columbia SC 29211

Re: Dion O. Taylor v. State
Case #: 2012-CP-10-8090

Dear Clerk,

Enclosed for filing is a notice of appeal in the above case. Also enclosed are: ① Contemporaneous explanation required by SCACR for notice of appeal of this type ② A copy of the order/judgment [redacted] ③ Proof of service of notice of appeal on State & lower court, copy of final order.

Sincerely,
Dion O. Taylor
#335089-RHU-218-A
Allendale Correctional Institution
P.O. Box 1151
Fairfax SC 29827

Dated:
6/25/15

cc:
Office of the Attorney General
P.O. Box 11549
Columbia SC 29211

Julie J. Armstrong
Clerk of Court, C.P. & G.S.
Chas. County
100 Broad St. Suite 106
Chas. SC 29401-2258

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S. Ct copy

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JUN 29 2015
S.C. SUPREME COURT

The State of South Carolina
In The Supreme Court

Appeal from Charleston County
Court of Common Pleas
R. Markley Dennis Jr., Circuit Court Judge

Case #: 2012-CP-10-8090

Dion O. Taylor.... - Appellant

v.

State..... - Respondent

Notice of Appeal

Dion O. Taylor, Appellant, Appeals the order of Hon. R. Markley Dennis Jr., dated 15th of May 2015. The entry of Judgment reflects the order being executed on the 19th of May 2015 & entered on the following day, in the Court of Common Pleas, Chas. County. Appellant received written notice of said order on the 26th of May 2015.

Date: 6-25-15

S/Dion O. Taylor
#335089-RHLP-218-A
Allendale Correctional Institution
P.O. Box 1151
Fairfax, SC 29827

cc:
Office of the Attorney General
P.O. Box 11549
Columbia SC 29211

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JUN 29 2015
S.C. SUPREME COURT

The State of South Carolina
In The Supreme Court

Appeal From Charleston County
Court of Common Pleas
R. Markley Dennis Jr., Circuit Court Judge

Case #: 2012-CP-10-8090

Dion O. Taylor ... Appellant

v.

"State" ..... Respondent

Proof of Service

I, Appellant, Dion O. Taylor, certify that I have served the Notice of Appeal on State' by depositing a copy of it in the U.S. Mail, postage pre-paid on date of 6/25-2015, & addressed to: Office of the Attorney General, P.O. Box 11549, Columbia SC 29211. Appellant executed the same afore-described process & mailed to lower court at: Julie J. Armstrong, Clerk of Court, C.P & G.S., Charleston County, 100 Broad St., Suite 106, Charleston SC 29401-2258.

Dated:
6/25/15

S/ Dion O. Taylor
#335089-RHU 218-A
Allendale Correctional Institution
P.O. Box 1151
Fairfax, SC 29827

* Appellant also on named date above mailed simultaneous copy of order/judgment to lower court.

SOL AG GS Pl'ff

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Dion O. Taylor, #335089, Applicant, v. State of South Carolina, Respondent.	)	2012-CP-10-8090 **FINAL ORDER OF DISMISSAL**

FILED 2015 ... PM 2:42 JULIE J. ... CLERK OF COURT

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 11, 2012. The Respondent (the State) made its Return and Motion to Dismiss on March 31, 2014, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, the Honorable Stephanie P. McDonald issued a Conditional Order of Dismissal dated July 17, 2014, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated August 15, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In the document titled "Response to the Conditional Order of Dismissal", the Applicant argues that he was not in a lucid state of mind when he chose to represent himself at his first PCR evidentiary hearing, that plea counsel should have filed a direct appeal on his behalf, that the State committed a Brady violation and that plea counsel was ineffective. This Court has reviewed the

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Applicant's response to the State's motion to dismiss in its entirety, in conjunction with the original pleadings, and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an applicant under this chapter **must be raised in his original, supplemental or amended Application**. (emphases added). Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Applicant could have alleged these allegations in his 2010 PCR action. He simply failed to do so.

The Applicant has also presented no legitimate reasons why these issues were not raised within the statute of limitations for filing a PCR application pursuant to S.C. Code. § 17-27-45(a). S.C. Code Ann. §17-27-45(a) reads as follows:

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An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on June 3, 2009. Therefore, Applicant was required to file his application before June 4, 2010. This Application was filed on December 11, 2012, which was well past the expiration of the statutory filing period.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby notifies the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 15th day of May, 2015.

~~Kristi Lea Harrington~~ R. Markley Dennis, Jr.
Presiding Judge[1]
Ninth Judicial Circuit

Moncks Corner, South Carolina.

1 The Honorable R. Markley Dennis, Jr. presided over Applicant's first PCR evidentiary hearing.

RMD 8/3

ATTORNEY GENERAL'S OFFICE
RECEIVED 7/28/14

ADMINISTRATIVE INSTRUCTIONS

_____FILE _____OPEN _____RAD
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CC
AG
AT

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Dion O. Taylor, S.C.D.C. No. 335089, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2012-CP-10-8090 **CONDITIONAL ORDER OF DISMISSAL**

FILED
2014 JUL 21 AM 9:18
JULIE J. ARMSTRONG
CLERK OF COURT
BY

In response to the post-conviction relief application filed December 11, 2012, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the January 2009 term of the Charleston County Grand Jury for criminal domestic violence (CDV) - 2nd or subsequent offense (2009-GS-10-0031) and armed robbery (2009-GS-10-0030). He was represented by Cody Groeber, Esquire.

On June 3, 2009, the Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable Roger M. Young, Sr. sentenced the Applicant to imprisonment for ten (10) years on the armed robbery and three (3) years imprisonment for CDV, to run concurrently with each other and concurrently with a probation revocation. The Applicant did not appeal.

2009-CP-10-6320

The Applicant filed an application for post-conviction relief (PCR) on October 6, 2009 (2009-CP-10-6320). In that application, the Applicant raised the following grounds for relief:

1. Ineffective assistance of counsel.
   a. Gave erroneous evidence.
   b. Failed to investigate.
   c. Failed to get another mental evaluation for Applicant.
   d. Failed to inform plea judge that Applicant was not on medication at time of the offense.

The Respondent made its Return on February 1, 2010. The court initially appointed John T. Chakaris, Esquire to represent the Applicant. On June 21, 2011, through counsel John T. Chakaris, Applicant made a request to amend the petition. In the proposed amendments, counsel attached a *pro se* pleading of the Applicant's in which Applicant alleged:

1. Pleas counsel deprived mentally ill defendant his Sixth and Fourteenth Amendment rights when ineffective counsel:
   a. Counsel was ineffective when counsel provided me erroneous, inaccurate and untrue to get me to plead guilty.
   b. Counsel withheld evaluation reports that was considered prior to 9/24/08 from myself, from judge show transcript.
   c. Provided state evaluation report to the judge while Applicant was medicated for mental illness.
   d. Failed to withdraw applicant's guilty plea.
   e. Failed to request a Blair hearing to decide whether mentally ill Applicant was competent during the time at criminal act when I was not medicated.
   f. Failure to investigate and contact witnesses and discover exculpatory evidence and get witnesses who would testify and to present evidence showing applicant mental state, just months before crime.
   g. Failure to consult with Defendant (i.e. direct appeal, about state eval, etc.).
   h. Failure to advise defendant about a potentially affirmative defense to charged crime.
   i. State evaluation discrepancies, issues, prove incompetence, prejudicial by never being.
2. Rule 11 (B).
3. Judge Abused his discretion.
4. Transcript discrepancies.
5. State return - no direct appeal, no statement of confession.

DAR 2

On November 18, 2010, the Honorable Kristi Harrington relieved Mr. Chakaris as counsel. The Clerk of Court appointed Florence Scarborough, Esquire, on December 7, 2010. An evidentiary hearing into the matter was convened on March 1, 2011, at the Charleston County Courthouse before the Honorable R. Markley Dennis. At the outset, counsel was relieved and the Applicant chose to appear *pro se*. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent. Judge Dennis entered a written order of Dismissal dated April 5, 2011, and filed April 13, 2011.

The Premature March 2011 Notice of Appeal

After the hearing, Respondent submitted a proposed order to Judge Dennis. On March 14, 2011, the Applicant made a notice of appeal. On April 12, 2011, the South Carolina Supreme Court entered an Order of Dismissal as to the appeal because a final order of dismissal was not provided to the Supreme Court. Applicant then filed a "Motion to Alter and/or Amend Judgment" in which he asserted that he provided the court with an unsigned and undated copy of the order of dismissal. The Supreme Court construed this filing as a motion to reinstate the appeal. In an Order dated April 21, 2011, the Supreme Court of South Carolina stated that it had reviewed the records of the Charleston County Clerk of Court's website which indicated that the Order of Dismissal was signed April 5, 2011, and entered in the Clerk's Office on April 13, 2011. The Supreme Court then concluded that the filed notice of appeal was premature because it was filed prior to the entry of the final order in the case, citing SCACR Rule 243 (b), and Rule 203(B)(1). The Court denied the request to reinstate the appeal; however, it concluded that:

> Since this order serves as written notice that the order of dismissal has been entered by the Charleston County Clerk of Court, petitioner shall have thirty days from the date he receives this order to serve and file another notice of appeal, which must include proof of service on the Attorney General's Office and a copy of the signed and dated order of dismissal. Rule 243(b) and 203(b)(1).

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Dion Orlando Taylor v. State, Order (S.Ct. S.C. April 21, 2011).

The Proceedings after the May 13, 2011 Notice of Appeal and Dismissal.

Proceeding *pro se*, on May 13, 2011, the Applicant filed a Notice of Appeal based upon the Supreme Court's order. On May 16, 2011, the Clerk of Court of the Supreme Court requested a copy of the final order of dismissal because none was provided with the motion. On August 3, 2011, the Supreme Court of South Carolina entered an "Order of Dismissal." Dion Taylor v. State, Order (S.C.S.Ct. August 3, 2011)(dismissing for failure to order transcript of hearing). The order stayed the dismissal for 15 days. On August 22, 2011, the South Carolina Supreme Court issued its remittitur in the action.

Federal Habeas Corpus

The Applicant subsequently filed a *pro se* Petition for Writ of Habeas Corpus in the United States District Court for the District of South Carolina (0:11-CV-01456-CMC-PJG). The Respondent served its Return and Memorandum of Law in support of Motion for Summary Judgment on August 22, 2011. On November 14, 2011, the Honorable Paige J. Gossett, United States Magistrate Judge, entered the Report and Recommendation, recommending that the petition be dismissed and the motion for summary judgment be granted. In the Opinion and Order filed December 19, 2011, the Honorable Cameron McGowan Currie, United States District Judge, denied the petition.

The Applicant subsequently appealed to the United States Court of Appeals for the Fourth Circuit. In an April 3, 2012 unpublished per curiam opinion, the Court dismissed the appeal. The Mandate was issued on July 5, 2012.

In his current application for post-conviction relief, the Applicant alleges that he is being held unlawfully for the following reasons:

1. Brady violation.
2. Ineffective assistance of counsel.
   a. "Not producing signed written statement."
   b. Did not inform of affirmative defense.
   c. Did not thoroughly question doctor.
3. Excessive sentence.
4. Not informed of right to appeal.

III.

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous application

APM
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for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 420 S.E.2d 834 (1992).

IV.

This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to –160. S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on June 3, 2009. This Application was filed on December 11, 2012, well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (2003) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief should be summarily dismissed for failure to file within the time mandated by statute and for being successive.

V.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General
Attn: J. Croom Hunter, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 17th day of July, 2014.

THE HONORABLE STEPHANIE P. MCDONALD
Chief Administrative Judge
Ninth Judicial Circuit Court

Charleston, South Carolina

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S. Ct Copy

The State of South Carolina
In The Supreme Court

Dion O. Taylor ... Appellant
v.
State ..... Respondent

Case #: 2012-CP-10-8090 / Explanation Required w/ Notice of Appeal

Pursuant to SCACR 243(c), petitioner above named, forthwith presents to this Honorable Court, the requisite explanation w/ facts & citation(s) of authority, as to show why the determination by the lower court was/is improper & or inapplicable to the Appellants case as to the successiveness of his per application & the States stat. of lim. defenses).

Facts & Discussion

The lower court ruled that stat. of limitations barred Appellants Application from being considered, this is inapplicable to the instant case, due to the issue of ineffective asst. of counsel as far as him not being advised of his appeal rights & him being unaware of said appeal rights. Appellant is also indigent. S. Ct precedent in this State mandates that the one yr. stat. of lim. does not apply to instances where there is a clm of ineffectiveness of counsel, by failing to advise of appellate rights. This Court shall take notice that the State has asserted that the Appellant did not file a direct appeal. The record of the Appellants initial evid. hearing belies this assertion as the pro se direct appeal was dismissed due to issues not being able to be preserved for review by state law, which in itself proves plenarity of prejudice to Appellant by counsel ineffectiveness & the States failure to provide this indigent Appellant counsel on his first appeal as of right.

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Violations consist of Equal Protection & Due Process, respectively. The States procedure is an Adequate one As to ensuring that the direct Appeal was resolved in A way related to the merits. The Appellant has not knowingly, voluntarily, or intelligently waived right to present claims set forth in his Application. The lower court has in the way of exhibits that showed through no fault of his own, the petitioner wasn't medicated for myriad serious mental health illnesses At times relevant to his initial pcr hearing. Contemporaneously, evid. was presented to the lower court showing the Adverse effects Appellant suffered from not being medicated w/psychotropics At times germane to the initial pcr proceeding. Evidence Also exists that Approx A yr before the filing of this pcr Application, that the petitioners mental health was one of 'deterioration' daily, due to the Appellant not being medicated Appropriately.

At the Appellants plea hearing, the court is found making An extensive inquiry into whether the Appellant was medicated & how medications Affect him, ect. No such inquiry can be found to be made by the pcr (lower court) As to any voluntary, intelligent waiver, or overall lucidity, or the lack thereof. The record is devoid of any such intelligent waiver because of the issue of not being properly medicated or At all. This is one of the reasons why issues (pcr) were not raised or inAdequately raised At initial hearing. Additional reasons exist, As A Brady violation & ineffectiveness of counsel claim was not & still in Actuality can not be raised due to counsel ineffectiveness & prosecutorial misconduct, the premise of the Brady violation SCR Crim P. Rule 5. At the Appellants initial pcr hearing, counsel testified that the Appellant did desire A trial. Moreover, the court found counsel testimony 'credible.' The Appellant At relevant times prior to charged crime & execution of written statement/confession, wasn't medicated, was recently released from mental hospital (Inst. of Psych.) was contemplating suicide & invoked his fifth Amendment right to silence before the signing of waiver, which because of the police initiating contact subsequent to invoking of said right, should have been deemed As

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involuntarily executed. Nevertheless, at the plea hearing, the prosecution avers that the appellant gave a signed written confession to charged crime. Even though appellant signed a typed version of the confession, not until yrs later did he remember a significant variance in the written & typed version, which was substantial. The typed version states that appellant is on prescribed medications for mental illnesses, the written version, to the appellants best recollection, states he was just recently released from hospital & hasn't been taking his meds since released, nor was he at time of interrogation or questioning, or at the execution of waiver signing all ~~occurring~~ occurring simultaneously. This is significant because the appellant never had an opportunity to compare these two statements & was prejudiced by this in a number of ways, amongst them being, forensic doctors using statements to support accountability w/ a confession w/ significant variance. By state & fed law, this statement in its written form was to be inclusive w/ the discovery material & it was not. The Appellant still hasn't seen a copy of the written statement. This is another cogent reason as to why this or these claims were inadequately or not raised in its initial hearing. The preceeding are hopefully sufficient facts - As to why successiveness & stat. of lim. defense pleaded by State must fail & why the lower courts espousing of such was improper due to the circumstances, facts & the following Applicable law.

Applicable Law

In Ferguson v. State, 382 S.C. 615, 677, S.E. 2d 600 (2009): "Ferguson ... has a history of mental illness, bipolar and disorder ..." "... application ... dismissed ... on the ground it was barred by one yr. stat. of lim. set forth in S.C. Code Ann. § 17-27-45(a). "We granted certiorari." ... if at a future date, the petitioner regains his competency & discovers that at his original PCR hearing his incompetency prevented his ability to assist ... on a fact based claim of ineffective asst. of counsel, he may ... raise claim in a subsequent proceeding." Id.

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Pg (4)

Cont. Ferguson: "... the critical inquiry remains whether the circumstances preventing a petitioner from making a timely filing were both beyond the petitioners control & unavoidable despite due diligence." Nara v. Frank, 264 F.3d 310, 320 (3d Cir 2001) overruled on other grounds by Carey v. Saffold, 536 U.S. 214, 122 S.Ct. 2134, 153 L.Ed.2d 260 (2002) (mental incompetence may warrant equitable tolling where alleged incompetence has affected petitioners ability to timely file). The Appellant in this instance has also been diagnosed as being bipolar & having a personality disorder & major depressive disorder, all diagnosed prior to incarceration, appellant has hospitalized for a suicide attempt, doctors since incarceration have concurred w/ other doctors diagnoses. Through no fault of his own, as exhibits before the lower courts showed, he was not medicated at all prior to or at initial pcr proceeding. When an individual is attempting to procure relief from the courts, this can obviously be a time of anguish, tension & stress, which only compounds the petitioners existing stressful mental health. Jones v. Com., 506 S.E. 2d 27 (Va. App. 1998): "(Jones) suffers from a personality disorder which renders ... mentally incompetent at times of stress." U.S. v. Henley, 8 F. Supp. 2d 503 (E.D. N.C.) (1998): "According to the Diagnostic & Statistical Man. of the American Psy. Asc. (quoting American Diagnostic Man. 629 (Chev) 4th Ed. 1994), a personality disorder is an enduring pattern of inner exp. & behavior which deviates markedly from the expectations of the indiv. culture ... & leads to distress & impairment." Judge ... noted ... a personality disorder is a systematic impairing psychiatric abnormality that can dominate the persons mental state to the point where they experience significant functional impairment or subjective distress." Id at 479 80 pg. 507. For the petitioner to be diagnosed w/ said personality disorder & not be treated when embarking & involved in collateral attack on his sentence should not be considered innocuous. W/ the afore-stated rule of law & evid. before lower court, lucidity should not have been presumed or assumed, w/ the history & the record the lower

(5) court cont feign ignorance of seriousness of mental health issues of Appellant. The petitioner was diligent in his attempts to ascertain as much evid. as he could, but under the circumstances of not being able to organize his thoughts properly at the time & inability to control his emotions, the pcr evidentiary hearing was one in futility exacerbated by the absence of any counsel on his behalf.

Ferguson goes on to states: "Although we have not specifically addressed tolling the stat. of lim. in the context of mentally incompetent pcr applicants, case law warrants a holding that in circumstances in which an applicant demonstrates the failure to timely file for pcr was due to mental incompetency, the stat. should be tolled." The stat. of lim. should be tolled in this instance as the petitioners situation is almost identical to the S. Ct precedent of this State on this issue & the petitioner should be afforded another hearing. Ferguson cont: "Wilson v. State, 348 S.C. 215, 559, S.E. 2d 581 (2002), we held every def. has right to file a direct appeal & one pcr app." "... since counsel has been ineffective in failing to file an appeal ... we held policy would be frustrated if the one yr. stat. of lim. for pcr claims applied where the applicant was denied his direct appeal due to ineffective asst. of counsel... Id at 218, 559 S.E. 2d at 583. Martinez v. Court of Appeal of Calif., 120 S.Ct 684 (2000): " The ... court ... explained that the right to counsel on appeal stems from the Due Process & Equal Protection Clauses of the Fourteenth Amend..." Smith v. Robbins, 120 S. Ct 746 (2000): "Denial of counsel altogether on appeal warrants a presumption of prejudice..."'... Equal Protection & Due Process Clauses... require that a States procedure "afford adequate & effective review to indigent defendants," Griffin, supra, at 20, 76 S.Ct 585.' A States' proc. provides such review so long as it reasonably ensures that an indigents appeal will be resolved in a way that is related to the merit of that appeal." Eskridge v. Washington Bd. of Prison Terms & Paroles,

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Pg (6)

357 U.S. 214, 78 S.Ct 1061, Lane v. Brown, 372 U.S. 477, 83 S.Ct 789. White v. State, 263 S.C. 110, 208 S.E. 2d 35 (S.C. 1974): "Although there was a reasonable basis for ... counsels conclusion or assumptions that the clef. was fully aware of his appeal rights, counsel should not have rested upon that assumption. He should have made certain that the clef. was fully aware of his rights & in the absence of an intelligent waiver by the clef. ... pursued an appeal in his behalf or ... complied w/ procedures ..." "... citing decisions of the United States Fourth Cir. Court of Appeals in Nelson v. Peyton, 415 F.2d 1154 & Shiflett v. Commonwealth of Virginia, 447 F.2d 50, concluded that the clef. did not knowingly & intelligently waive his right to appeal." In Delaney v. State, 269 S.C. 555, 238 S.E. 2d 679 (S.C. 1977): "... we find appellants allegation that he was denied effective asst. of counsel because he was unaware of his right to appeal could not have been conclusively refuted on the record before lower court." The S.Ct of the U.S. has also ruled on the duty to inform of appeal rights in the context of guilty pleas. Roe v. Flores-Ortega, 120 S.Ct 1029 (2000): "[Respondent] appeared ... w/ public defender ... & pleaded guilty ..." "After pronouncing sentence ... judge informed ... you may file an appeal ..." Judge also noted in Roe: "It's clear ... [Ortega] had little or no understanding of what the process was or what the appeal process was or what appeal meant at that stage." "It is important to note in appellants case he never waived all his appeal rights nor did court inform him of appeal rights. At the [redacted] petitioners original per hearing counsel only testified that appellant didn't ask him to file a direct appeal on his behalf, he also at appellants plea hearing & in attorney client file notes acknowledges his client had never been in this type of situation before of this severity, had never been to prison, had only a history of petty crimes & nothing in appellants history suggests he would at that time, know

of any appeal rights & the in fact did it. Counsel had a duty to inform, especially viewed w/ his testimony at orginal per hearing that his client (appellant) desired a trial. (See also Cherry v. State, 386 S.E. 2d 624 (S.C. 1999). Furthermore, the S.C. State Appeal procedure is an invalid one, as the petitioner was a known indigent & as explained in his App., court never advised & subsequently Indigent Defense Refused to represent him due to it being an appeal from a guilty plea. Lindh v. State, 274 S.C. 243, 262 S.E. 2d 735: "While a second App. is not absolutely banned... successive applications will be looked upon w/ disfavor unless there is ample reason for permitting a person... to litigate again." This is true... where this Court has reviewed the action by way of direct appeal & found the appeal... w/out merit." The appellant distinguishes in part from the afore-mentioned case law, As alluded to earlier, the petitioner only knew & filed a direct appeal after being incarcerated & didn't have the benefit of counsel, & petitioner believes ample reasons have been delineated, making room for successive App. allowance. An effective Brady claim couldn't be laid out for the lower court due to the very nature of the said claim & that the appellant is still w/out the cited Brady material, (i.e written confession). The prosecution had/has in its possession a signed written confession w/ a significant variance from the typed version. Why is this is so cogent is of expansive reasoning. Appellant never had an opportunity to compare the confessions differences, the appellant, at the time of execution of confession was just recently released from mental hospital from commitment, & he wasn't medicated. It has already been established that the appellant desired a trial & not having this info contributed to the [redacted] helplessness he felt at not having any other option but a guilty plea, he wouldn't have pled guilty if this still missing document was provided as it should have been by state & fed. law & by Rule 5 of

of SCR Crim. P. which states in pertinent part: (See also State v. Knighton, 512 S.E. 2d 117 (S.C. App. 1999): (A) Disclosure of evid by Prosecution (1) Info Subject to Disclosure (A) Statement of def. upon request by a def. the prosecution shall permit the def. to inspect, copy... : any relevant written... statements made by the def. or copies thereof w/in custody or control of the prosecution, the existence which is known or may become known to the Attorney for the prosecution, the substance of any oral statement, which the prosecution intends to offer into evid... made by def. whether before or after arrest in response to interrogation..." At the appellants plea hearing, the prosecution read into evid. that the appellant gave a signed written version of confession to charged crime & prosecution hasn't & didn't ever produce the signed written version of confession w/ requested discovery under Brady by & through appellant counsel. Appellant still doesn't have this document. On universform, it explicitly makes reference to interrogation & the statements (oral) that derive from said inquiry. In addition, appellants counsel was ineffective by knowing his client wanted a trial & not taking necessary steps to ensure prosecutorial compliance w/ discovery requests, to the appellant this strongly suggests collusion due to the egregiousness of said omission. Gibson v. State, 334 S.C. 515, 514, S.E 2d 320 (S.C. 1999): "A prosecutor commits misconduct in failing to reveal... Brady material regardless of whether such failure is due to negligence or an intentional act, as a Court may find a Brady violation irrespective of the good faith or bad faith of the prosecutor.' Gibson filed a discovery motion pursuant to Brady & Rule 5, SCR Crim. P. 'The PCR judge... ruled the State had violated Brady by failing to disclose all material...' The judge ruled that this info was material regardless of def. counsels independent knowledge... defense (counsel) could have challenged

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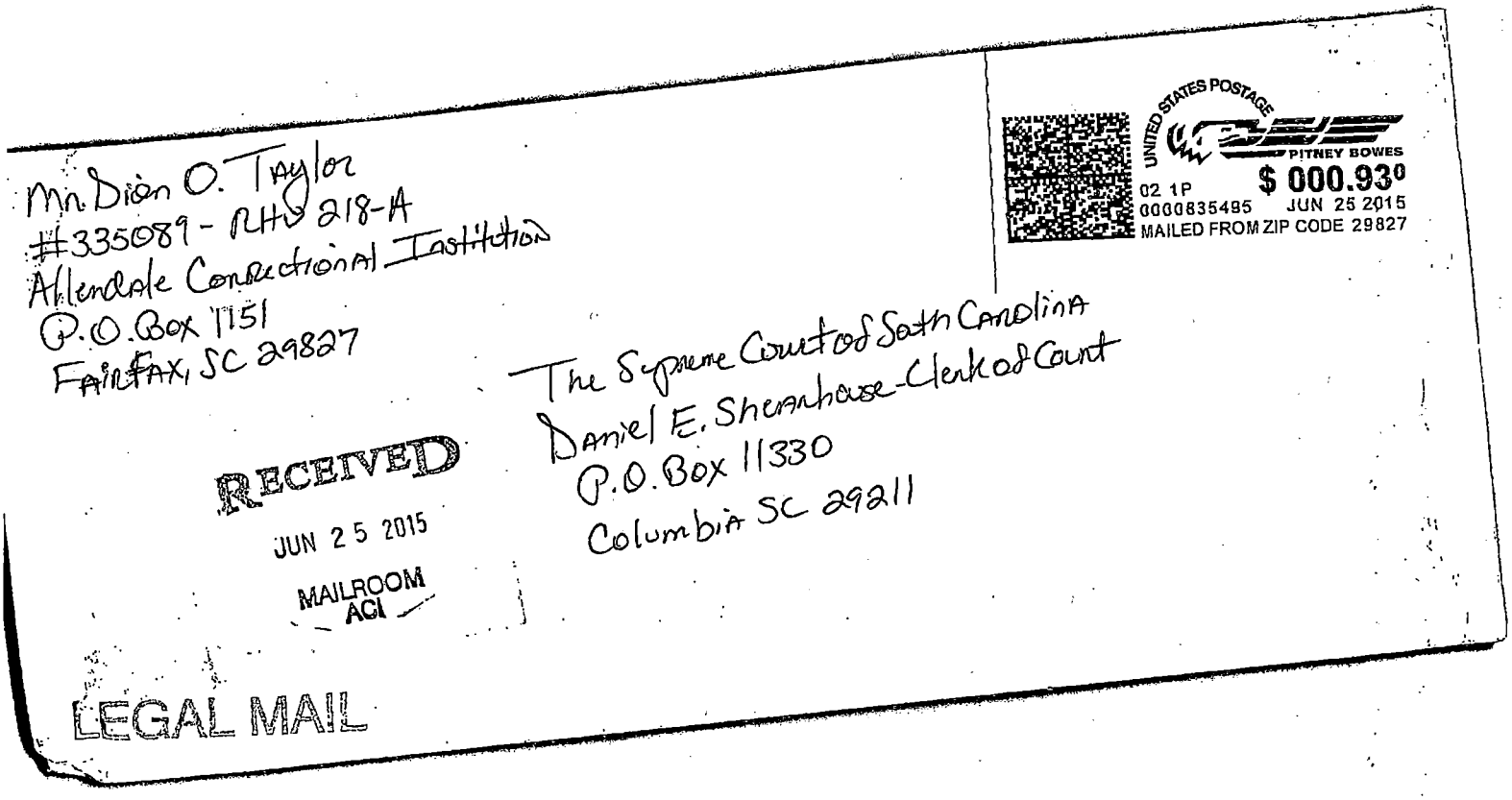
veracity..." This is analogous to the appellants circumstances as counsel would have had more reason to encourage the desire for trial, to refute the voluntariness of confession, the worker & finding by forensic doctors. w/out this material evid, that is still absentee, the appellant cannot reasonably be expected to present this issue in a first or subsequent App. for per Relief.

Conclusion

Petitioners Due Process, Equal Protection, Sixth Amend violations are at issue in this appeal & the facts, circumstances, & applicable law support the petitioners position that the lower courts ruling was improper or inapplicable in this instance.

Respectfully submitted,
By: S/David O. Taylor

Dated:
6-25-15



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