

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

George C. James, Jr., Chief Administrative Judge

S.C. SUPREME COURT

Case No. 2015-CP-31-0068

Thomas Lowery, 83240,

Appellant,

v.

State of South Carolina,

Respondent.

APPELLANT'S EXPLANATION WHY THE LOWER COURT
DETERMINATION IS IMPROPER AND WHY HIS APPEAL
SHOULD BE ACCEPTED AND GRANTED

Appellant now hereby providing his Explanation why the lower court determination is improper in tandem with filing his Notice of Intent to Appeal, because previously in this matter, the Chief Administrative Judge for the Third Circuit issued a Final Order of Dismissal denying the Appellant's application for post-conviction relief pursuant to §17-27-45(c), of S.C. Code of Laws. Appellant filed timely objections to the Conditional Order in his Petition for Immediate Release from Custody, in which the judge disregarded. However, pursuant to SCACR 243(C), the State Supreme Court must grant or deny an appeal when the lower court enters an order adverse to Appellant.

The Appellant asserts that to obtain an appeal, he must make a substantial showing of a constitutional right under §17-27-45(C), of S.C. Code of Laws. He need not show that he should prevail on the merits, because he has already failed in that endeavor. Rather, he is merely required to make the modest showing, that reasonable jurists would find the lower court's assessment of the constitutional claims debatable or wrong.

Appellant's explanation is that the substantial showing standard required for an appeal is relatively low pursuant to claims under §17-27-45(c). Again, the issues if any of the following apply: (1) the issues are debatable among reasonable jurists; (2) another court could resolve the issues differently; or (3) the questions raised are adequate enough to encourage the Appellant to proceed further. Finally, the Appellant asserts that the Supreme Court must resolve doubts about the propriety of §17-27-45(c), in the Appellant's favor.

The Appellant is a fragile litigant with limited rights who have no voice in the development of procedures, and lack oversight for the needs of this matter. As such, the Respondent has retaliated against the Appellant with statute of limitations, successiveness, doctrine of laches, and doctrine of res judicata with totally disregard of his Fifth Amendment and Equal Protec-

tion Rights under §17-27-45(C), and South Carolina Rules of Evidence (SCRE) Rule 603.

Judicial process require enforcing rights and duties recognized by substantive law and for justly administering redress for procedure mistakes, neglect, and inadvertence. Here, the Appellant made his §17-27-45(C) application within a reasonable time to voice his development of the claims to set aside the judgments throughout his entire judicial proceedings in due diligence. Again, the Appellant is a fragile litigant and the only other procedural remedy is by a new or independent action. The Appellant is endeavored to ascertain all the remedies and types of relief heretofore available by coram nobis, coram vobis, audita querela, bill of review, or bill in the nature of a bill of review, or again, by independent action, or Motion 60(b), South Carolina Rules of Civil Procedure (SCRCP). Based on the lower court's decision a Rule 59 Motion would be futile, so the only other recourse is an appeal for supervisory review of the structural procedural error pertaining to Appellant's invalid conviction as a result of a constitutionally deficient guilty plea proceedings absence of an oath or affirmation as required by SCRE, Rule 603 findings 5th Amendment's and 14th Amendment's guarantee.

SCRE, Rule 603 reads: Before testifying, **every witness shall be** required to declare that the witness will testify truthfully by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so. See: §19-1-40, of S.C. Code of Laws.

The absence of the oath or affirmation at Appellant's constitutionally deficient guilty plea proceedings violates due process that amount to procedural structural error, regardless of how overwhelming the evidence of his guilt. Appellant contends that §17-27-45(C), rendered in any action or proceeding governed by the same may be vacated under certain specified circumstances upon application to the court, and Rule 60(b) prescribes the practice in proceedings to obtain relief.

Appellant request for immediate release from custody in petition for set aside judgments with the lower court dated July 20, 2015, argues that keeping him imprisoned for over 40 years upon a constitutionally deficient guilty plea court did not swear no one under oath or affirmation during the proceedings was such an egregious violation of the 6th, and 5th Amendment guarantee from self-incrimination that the lower courts had, in fact, conspired in judicial bias, prosecutorial and judicial misconduct that has caused severe anxiety relating to his post unethical deficient guilty plea detention, in which the plea is void or invalid, and a speedy trial if required based on the material under §17-27-45(C), and Rule 60(b), SCRCP.

1. Whether unconstitutional criminal deficient guilty plea absence of the oath or affirmation of him and other witnesses procedure may effect a structural error on conviction and sentence obtained.
2. Whether claims are first impression novelty questions of law under §17-27-45(C).
3. Whether Appellant suffers anxiety or prejudice because of a deficient unethical guilty plea post detention, in which judicial bias and prosecutorial misconduct is evident throughout his entire judicial proceedings for the past 4 decades.

The Appellant challenges the procedures pursuant to Rule 60(b), SCRCP, and the procedures of §17-27-45(C), which provide a liberty interest to be heard after the date when the facts were ascertained by the exercise of reasonable diligence by him, a fragile litigant.

For the reasons stated and explained herein, the lower court's determination is improper, and the State Supreme Court should accept supervisory jurisdiction based upon Appellant's explanation and grant his notice of appeal pursuant to SCACR 243(C), and §17-27-45(C), of S.C. Code of Laws, along with Rule 60(b), SCRCP, because he is required to bring a new or independent action.

I declare, certify, verify, and state under penalty of perjury that the foregoing is true and correct.

Signed this 1st day of October, 2015.

s/ *Thomas Lowery*
Thomas Lowery, 83240
KER.CI-HD235
4848 Goldmine Hwy.
Kershaw, SC 29067

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PROOF OF SERVICE

Applicant, Thomas Lowery, 83240, do under oath says that he did mail from Kershaw Correctional Institution mail services his Explanation why the Lower Court's determination is improper, and why his appeal should be accepted and granted, along with his Notice of Intent to Appeal, on the 1st day of October, 2015, by depositing a copy of the same in the U.S. Mail, postage pre-paid to the following: Patrick L. Schmeckpeper
PCR Division
P.O. Box 11549
Columbia, SC 29211

James I. Davis,
Lee County Clerk
P.O. Box 387
Bishopville, SC 29010

By my signature below I affirm the same.

s/ *Thomas Lowery*
Thomas Lowery, 83240
KER.CI=HD 235
4848 Goldmine Hwy.
Kershaw, SC 29067

October 1, 2015