

MR. HAMID DEMMIRIO #115800
LIEBER CORR. INST. EA-8
POST OFFICE BOX 205
RIDGEVILLE, S.C. 29472

OCTOBER 16, 2015


RE: 2013-CP-40-4121

S.C. SUPREME COURT
MR. DANIEL SHEAROUSE, CLERK
1231 GERVAIS ST., BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

DEAR CLERK SHEAROUSE;

ENCLOSED PLEASE FIND A COPY OF NOTICE OF APPEAL & PETITION FOR WRIT OF CERTIORARI IN THE ABOVE-CAPTIONED CASE. MAY YOU PLEASE RETURN A COPY BACK TO ME STAMP, CLOCKED, AND FILE FOR MY FILE?

SINCERELY,

3/ 
MR. HAMID DEMMIRIO #115800
PRO SE, APPLICANT

RECEIVED

OCT 21 2015

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

OCT 21 2015

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

S.C. SUPREME COURT

ALISON RENEE LEE, CHIEF ADMINISTRATIVE JUDGE

CASE No.: 2013-CP-40-4121

HAMID DEMMIRIO, PETITIONER,

VS.

STATE OF SOUTH CAROLINA, RESPONDENT.

NOTICE OF APPEAL & PETITION FOR WRIT OF CERTIORARI

MRS. JESSICA E. KINARD
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
ATTORNEY FOR RESPONDENT

MR. HAMID DEMMIRIO # 115800
LIEBER CORR. INST. EA-8
POST OFFICE BOX 205
RIDGEVILLE, S.C. 29472
PRO SE LITIGANT

TABLE OF CITED AUTHORITIES

- AUSTIN V. STATE, 305 S.C. 453, 409 S.E.2d 395 (1991)
AICE V. STATE, 305 S.C. 448, 409 S.E.2d 392 (1991)
TILLEY V. STATE, 334 S.C. 24, 511 S.E.2d 689 (1999)
CARTER V. STATE, 293 S.C. 528, 362 S.E.2d 20 (1987)
CASE V. STATE, 277 S.C. 474, 289 S.E.2d 413 (1982)
RODDY V. STATE, 339 S.C. 29, 33, 528 S.E.2d 418 (2000)
PITTMAN V. STATE, 337 S.C. 597, 600-01, 524 S.E.2d 623, 625 (1999)
STATE V. KING, 222 S.C. 108, 71 S.E.2d 793 (1952)
DELANEY V. STATE, 269 S.C. 555, 238 S.E.2d 679 (1977)
CHAMBERS V. STATE, 262 S.C. 202, 203 S.E.2d 426 (1974)
MCCOY V. STATE, 401 S.C. 363, 737 S.E.2d 623 (2013)
DANSBY V. STATE, 2014 TEX. APP. LEXIS 903 (2014)
BRADY V. MARYLAND, 373 U.S. 83, 83 S.Ct. 1194 (1963)
BOYKIN V. ALABAMA, 395 U.S. 238 (1969)
GIZLZO V. UNITED STATES, 405 U.S. 150, 154-55, 92 S.Ct. 763 (1972)
UNITED STATES V. AGURS, 427 U.S. 97, 107, 96 S.Ct. 2392 (1976)
STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052 (1984)
KIMMELMAN V. MORRISON, 477 U.S. 365, 382 (1986)
HERRERA V. COLLINS, 506 U.S. 390, 113 S.Ct. 853 (1993)
KYLES V. WHITLEY, 514 U.S. 419, 437, 115 S.Ct. 1555 (1995)
SCHLUP V. DELO, 513 U.S. 298, 115 S.Ct. 851 (1995)
HARRINGTON V. RICHTER, 131 S.Ct. 770, 790 (2011)
SMITH V. CAZN, 132 S.Ct. 627 (2012)
MCDUIGGIN V. PERKINS, 133 S.Ct. 1924 (2013)

LAW AND ANALYSIS

1. DID THE PCR COURT ERRED BY SUMMARILY DISMISSING APPLICANT'S FIRST, SECOND, AND THIRD PCR APPLICATIONS WHICH ASSERTED VALID CLAIMS TO WARRANT AN EVIDENTIARY HEARING ON APPLICANT'S RIGHT TO APPEAL AND/OR APPELLATE REVIEW?
2. DID THE PCR COURT ERRED BY NOT CONDUCTING A HEARING ON APPLICANT'S FIRST, SECOND, AND THIRD PCR TO FIND OUT WHETHER OR NOT IF THERE WERE A INEFFECTIVE ASSISTANCE CLAIM?
3. DID THE COURT ERRED BY NOT RULING ON APPLICANT'S BRADY V. MARYLAND CLAIM?
4. DID THE COURT ERRED BY VIOLATING APPLICANT'S DUE PROCESS BY NEVER RULING ON APPLICANT'S UNINTELLIGENT, INVOLUNTARY, AND UNKNOWING GUILTY PLEA?
5. DID THE COURT ABUSE ITS DISCRETION BY RENDERING A VERDICT WITHOUT A RECORD OF ANY SORT?

RECEIVED

OCT 21 2015

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

S.C. SUPREME COURT

ALISON RENEE LEE, CHIEF ADMINISTRATIVE JUDGE

CASE NO.: 2013-CP-48-4121

HAMID DEMMIRIO, #115800, PETITIONER,

VS.

STATE OF SOUTH CAROLINA, RESPONDENT.

NOW COMES, HAMID DEMMIRIO, PRO SE LITIGANT AND PETITIONER WHO RESPECTFULLY MOVES THIS HONORABLE COURT TO DENY AND DISMISS THE STATES CONTENTION BY REJECTING ALISON RENEE LEE ORDER SIGNED BY HER ON THE 24TH OF SEPTEMBER 2015 FOR THE FOLLOWING REASONS. THE RESPONDENT FORWARDED ITS FINAL ORDER OF DISMISSAL TO HONORABLE LEE AND THE PETITIONER ON THE 22ND OF SEPTEMBER 2015. TWO DAYS LATER ON THE 24TH OF SEPTEMBER 2015. JUDGE LEE SIGNED THAT ORDER OF DISMISSAL. LATER ON THE 28TH 2015, RICHLAND COUNTY CLERK, JEANETTE McBRIDE, CLOCKED, STAMPED, AND FILED WITH HER OFFICE. HOWEVER, THE PETITIONER DIDN'T RECEIVE THAT SIGNED ORDER UNTIL OCTOBER 6, 2015.

THE RESPONDENT, THE STATE, HAVEN'T SET FORTH OR OFFERED ANY TALISMANIC NOR PERSUASIVE REASONS FOR AN ENTRY OF FINAL ORDER OF DISMISSAL AS A MATTER OF LAW. THE STATE HAVE NOT SUCCESSFULLY REFUTED ANY OF THE FACTS SUPPORTING BOTH THE OBJECTIVE & SUBJECTIVE ELEMENTS OF PETITIONER'S ASSERTION NOR HAVE THE STATE MET THEIR BURDEN UNDER S.C. RULES OF CIVIL PROCEDURE, RULE 56(d)(e)(f) IN DEMONSTRATING NO GENUINE DISPUTE OF MATERIAL FACT.

THE PCR COURT ERRED BY NEVER CANVASSING, DELVING, NOR ADDRESSING APPLICANT'S AFTER/NEWLY DISCOVERED EVIDENCE. IN QUESTIONING ARE THE THREE (3) BOXES OF DOCUMENTS AND REPORTS WHICH S.C. LAW ENFORCEMENT DIVISION HAVE IN THEIR POSSESSION, CARE, AND CONTROL THAT TRIAL COUNSELS NOR PETITIONER NEVER VIEWED NOR KNEW TO HAVE EXISTED. THESE DOCUMENTS WAS REQUESTED BY BOTH COUNSELS AND PETITIONER BACK IN 1987 BEFORE PETITIONER'S GUILTY PLEA, AND ALL PARTIES, DEPARTMENTS AND AGENCIES FAILED TO HAND OVER AND DISCLOSE OF THESE EXCULPATORY AND IMPEACHMENT EVIDENCE SETTING FORTH A BRADY V. MARYLAND, 373 U.S. 83, 83 S.Ct. VIOLATION.

PETITIONER ASSERTS THAT WITHHOLDING OF SUCH MATERIALS, STATEMENTS, NOTES, LETTERS, PHOTOGRAPHS, ETC. RENDERS APPLICANT GUILTY PLEA UNKNOWING AND INVOLUNTARY. THE SUPREME COURT OF UNITED STATES SUBSEQUENTLY EXTENDED BRADY DISCLOSURE RULE TO MATERIAL IMPEACHMENT EVIDENCE UNDER GIGLIO V. UNITED STATES, 405 U.S. 150, 154-55, 92 S.Ct. 763 (1972) AND JETTISONED ANY REQUIREMENTS THAT A DEFENDANT MUST REQUEST EXCULPATORY MATERIAL EVIDENCE IN ORDER TO BE ENTITLED TO ITS DISCLOSURE UNITED STATE V. AGURS, 427 U.S. 97, 107, 96 S.Ct. 2392 (1976).

IN THIS RARE AND UNIQUE CASE AT BAR, THE APPLICANT HAS APODITICLY SHOWN THAT SLED AND THE STATE HAVE FAILED TO DISCLOSE THESE DOCUMENTS "WHICH HAD BEEN KNOWN TO THE PROSECUTION, BUT UNKNOWN TO THE DEFENSE." EVEN IF THE PROSECUTOR WAS NOT PERSONALLY AWARE OF THE EVIDENCE, THE STATE ISN'T EXEMPT NOR RELIEVE OF ITS DUTY TO DISCLOSURE BECAUSE "THE STATE" INCLUDES, IN ADDITION TO THE PROSECUTOR, OTHER LAWYERS AND EMPLOYEES IN HIS OFFICE AND MEMBERS OF LAW ENFORCEMENT CONNECTED TO THE INVESTIGATION AND PROSECUTION OF THE CASE PURSUANT TO S.C. CODE § 17-27-20(A)(3)(4)(6) AND § 17-27-45(C) AND KYLES V. WHITLEY, 514 U.S. 419, 437, 115 S.Ct. 1555 (1995). BRADY HOLDS THAT A PROSECUTOR VIOLATES DUE PROCESS WHEN HE (1.) SUPPRESSES EVIDENCE, (2.) THAT THE EVIDENCE IS FAVORABLE TO THE DEFENDANT, WHEN THE EVIDENCE IS MATERIAL TO GUILT OR INNOCENCE. Id. 87, 83 S.Ct. 1194 AND THIS HONORABLE COURT MUST AGREE WITH PETITIONER THAT THESE UNDISCLOSED DOCUMENTS THE STATE HAVE IN THEIR POSSESSION ARE INDEED FAVORABLE TO PETITIONER AND THAT THE STATE HAVE REPEATEDLY VIOLATED PETITIONERS DUE PROCESS RIGHTS. QUINTESENTIALLY, EVIDENCE IS MATERIAL UNDER BRADY IF IT CREATES A REASONABLE PROBABILITY OF A DIFFERENT RESULT. KYLES. A REASONABLE PROBABILITY DOES NOT MEAN THAT

THE DEFENDANT WOULD MORE LIKELY THAN NOT HAVE RECEIVE A DIFFERENT VERDICT WITH THE EVIDENCE ONLY THAT THE LIKELIHOOD OF A DIFFERENT RESULT IS GREAT ENOUGH TO UNDERMINE CONFIDENCE IN THE OUTCOME OF THE TRIAL. SMITH V. CAIN, 132 S.C. 627 (2012) (QUOTING) KYLES, 514 U.S. AT 434, 115 S.C. 1555.

PETITIONER ASSERTS THAT THE PCR COURT ERRED BY SUMMARILY DISMISSING HIS FIRST, SECOND, AND THIRD PCR APPLICATION WHICH ASSERTED VALID CLAIMS TO AN EVIDENTIARY HEARING ON APPLICANT'S RIGHT TO APPELLATE REVIEW PURSUANT TO AUSTIN V. STATE, 305 S.C. 453, 409 S.E.2d 395 (1991). UNDER THE PCR RULES, AN APPLICANT IS ENTITLED TO A FULL ADJUDICATION ON THE MERITS OF THE ORIGINAL PETITION, OR "ONE BITE AT THE APPLE." AICE V. STATE, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). THIS "BITE" INCLUDES AN APPLICANT'S RIGHT TO APPEAL THE DENIAL OF A PCR APPLICATION, AND THE RIGHT TO ASSISTANCE OF COUNSEL IN THAT APPEAL, WHICH THE APPLICANT NEVER EVER RECEIVED. SEE AICE, 305 S.C. AT 448, 409 S.E.2d AT 392.

NEXT, THE LOWER COURT CONTINUES TO ARGUE BY SAYING THAT THE PETITIONER IS PROCEDURALLY BARRED. ALTHOUGH ONE MAY REACH THIS RESULT UNDER A HYPER-TECHNICAL ANALYSIS, SUCH A CONCLUSION SHOULD AND MUST BE REJECTED AS WELL IN THIS CASE BECAUSE OF SO MANY IRREGULARITIES OCCURRED DURING AND SURROUNDING THE COURSE OF ALL THE PETITIONER'S JUDICIAL PROCEEDINGS. EVEN IF PETITIONER'S PCR APPLICATION IS SUCCESSIVE, WHICH THIS HONORABLE COURT SHOULD FEEL THAT IT ISN'T CONSIDERING THAT THE APPLICANT HASN'T HAD A BITE AT THE APPLE. THE UNIQUE COMBINATION OF THESE UNEQUIVOCAL FACTS IS THAT PETITIONER HAVE ASSERTED ENTITLES HIM TO RELIEF! CASE V. STATE, 277 S.C. 474, 289 S.E.2d 413 (1982) AND THAT SUCCESSIVE PCR APPLICATIONS HAVE BEEN PERMITTED AND GRANTED IN CASES INVOLVING UNIQUE FACTUAL CIRCUMSTANCES; SUCH AS THIS CASE. TILLEY V. STATE, 334 S.C. 24, 511 S.E.2d 689 (1999); CARTER V. STATE, 293 S.C. 528, 362 S.E.2d 20 (1987).

FOR SOME STRANGE REASON, IT SEEMS THAT THE LOWER COURT WILL NOT ABIDE NOR ADHERE TO BOYKIN V. ALABAMA, 395 U.S. 238 (1969); RODDY V. STATE, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000) WHEN IT COMES TO FINDING OUT IF A DEFENDANT'S GUILTY PLEA WAS KNOWINGLY AND VOLUNTARY ENTERED INTO. THE RECORDS MUST ESTABLISH THAT THE DEFENDANT HAD A FULL AND COMPLETE UNDERSTANDING OF THE IMPORTANCE AND CONSEQUENCES SURROUNDING THE PLEA. THE VOLUNTARINESS OF THE GUILTY PLEA ISN'T DETERMINED BY AN EXAMINATION OF A SPECIFIC INQUIRY MADE BY THE SENTENCING COURT ALONE, BUT IS DETERMINED AND SETTLED FROM BOTH THE TRIAL RECORD MADE AT THE TIME OF THE GUILTY PLEA, AND ALSO FROM THE RECORD OF THE PCR PROCEEDING. PITTMAN V. STATE, 337 S.C. 597, 600-01, 524 S.E.2d 623, 625 (1999).

SINCE THERE ISN'T A GUILTY PLEA TRANSCRIPT NOR A PCR TRANSCRIPT OF ANY SORT AVAILABLE TO ANALYZE AND EVALUATE THE UNTENABLE, IMPRUDENT, AND UNINTELLIGENT PLEA, HOW CAN ANY SOUNDED-MIND PERSON OR COURT TO FORM ANY RATIONAL JUDGMENT WITHOUT SUPPORT? ASSUME FACTS MUST BE SUPPORTED BY A CONSIDERABLE QUANTITY OF EVIDENCE WITHIN AND SURROUNDING THE CASE. STATE V. KING, 222 S.C. 108, 71 S.E.2d 793 (1952).

MOREOVER, PETITIONER MOVES THIS HONORABLE COURT TO REBUFF AND DENY THE STATE'S REQUEST ON ITS FINAL ORDER OF DISMISSAL MOTION AND GRANT PETITIONER'S REQUEST AND MOTION TO APPOINT COUNSEL, ORDER SLED TO DISCLOSE ANY AND ALL DOCUMENTS AND MATERIAL EVIDENCE THEY HAVE IN THEIR POSSESSION CONCERNING AND REGARDING PETITIONER'S CASE TO THE COURT AND TO THE PETITIONER WITHIN THIRTY (30) DAYS. REASON BEING, PETITIONER NEVER HAD A PARTIAL OR A FULL EVIDENTIARY HEARING ON ANY OF PETITIONER'S MERITS AND THAT "BOTH" TRIAL AND PCR ATTORNEY, MELISSA JANE REID KIMBROUGH, RENDERED ALL TYPE OF INEFFECTIVENESS THROUGHOUT PETITIONER'S GUILTY PLEA AND HIS JUDICIARY PROCEEDINGS, BUT CHIEF JUSTICE MOSS SAID ARTICULATED BEST IN CHAMBERS V. STATE, 262 S.C. 202, 203 S.E.2d 426 (1974); DELANEY V. STATE, 269 S.C. 555, 238 S.E.2d 679 (1977); MCCOY V. STATE, 401 S.C. 363, 737 S.E.2d 623 (2013).

THUS, THE QUESTION HERE IS WHETHER AN ATTORNEY'S REPRESENTATION AMOUNTED TO INCOMPETENCE UNDER PREVAILING PROFESSIONAL NORMS, NOT WHETHER HE OR SHE DEVIATED FROM BEST PRACTICES OR MOST COMMON CUSTOM. STRICKLAND V. WASHINGTON, 466 U.S. AT 690 (1984) WHEN COUNSEL'S NEVER SUPPRESSED ANY OF THE ALLEGE TAYNTED EVIDENCE WHICH IS A RELEVANT FACTOR IN QUESTION UNDER STRICKLAND, SEE KIMMELMAN V. MORRISON, 477 U.S. 365, 382 (1986) ; HARRINGTON V. RICHTER, 131 S.Ct. 770, 790 (2011).

BASED UPON ALL THE ABOVE, THE COURT SHOULD AND MUST FIND THAT BOTH COUNSEL'S CONDUCT DECLINED BELOW PROFESSIONAL STANDARDS. BY COUNSEL'S CONDUCT, THEY BOTH VIOLATED THE FOLLOWING PROVISIONS OF THE RULES OF PROFESSIONAL CONDUCT, RULE 407, SCACR; RULE 1.1 (FAILING TO PROVIDE COMPETENT REPRESENTATION TO A CLIENT); RULE 1.2 (A LAWYER SHALL CONSULT WITH CLIENT AS TO THE MEANS BY WHICH REPRESENTATION IS TO BE PURSUED); RULE 1.3 (FAILING TO ACT WITH REASONABLE DILIGENCE & PROMPTNESS IN REPRESENTING A CLIENT); RULE 1.4 (A LAWYER SHALL KEEP A CLIENT REASONABLY INFORMED ABOUT THE STATUS OF A MATTER); RULE 3.3 (A LAWYER SHALL NOT KNOWINGLY MAKE A FALSE STATEMENT OF MATERIAL FACT OR OFFER EVIDENCE THAT THE LAWYER KNOWS TO BE FALSE); RULE 8.4(A) VIOLATING THE RULES OF PROFESSIONAL CONDUCT); RULE 8.4(B) COMMITTING ADVERSELY LAWYER'S HONESTY, TRUSTWORTHINESS OR FITNESS AS A LAWYER); RULE 8.4(D) ENGAGING IN CONDUCT INVOLVING DISHONESTY, MISREPRESENTATION, AND RULE 8.4(E) (A LAWYER SHALL NOT ENGAGE IN CONDUCT THAT IS PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE.)

THE LOWER COURT IMPROPERLY DODGED MANY AND ALL OF THESE CONSTITUTIONAL ISSUES. THE APPLICANT PRESENTS AN INNOCENCE CLAIM. HOWEVER, THIS CLAIM MUST SHOW THAT THE EVIDENCE HE IS PRESENTING IS "NEWLY DISCOVERED" OR "NEWLY AVAILABLE" AND THAT SUCH IS AFFIRMATIVE OF HIS INNOCENCE. THERE ARE TWO (2) TYPES OF ACTUAL INNOCENCE THAT MAY BE RAISED. SCHLUP V. DELO 513 U.S. 298, 115 S.Ct. 851 (1995); HERRERA V. COLLINS. 506 U.S. 390, 113 S.Ct. 853 (1993). A HERRERA-TYPE CLAIM IS A SUBSTANTIVE CLAIM IN WHICH THE APPLICANT ASSERTS A BARE CLAIM OF INNOCENCE BASED SOLELY ON NEWLY DISCOVERED EVIDENCE. IN CONTRAST, A SCHLUP-TYPE CLAIM IS A PROCEDURAL CLAIM IN WHICH THE APPLICANT'S CLAIM OF INNOCENCE DOES NOT BY ITSELF PROVIDE A BASIS FOR RELIEF, BUT IS INTERTWINED WITH CONSTITUTIONAL ERROR THAT RENDERS A DEFENDANT'S CONVICTION INVALID." SEE SCHLUP, 513 U.S. AT 315, 115 S.Ct. 851 (1995); MCQUIGGIN V. PERKINS, 133 S.Ct. 1924 (2013).

THIS CASE ISN'T BASED ON A "FREE-STANDING" ACTUAL INNOCENCE CLAIM. THE SUPREME COURT OF UNITED STATES HAVE PERMITTED PETITIONER'S TO OVERCOME PROCEDURAL BARRIERS TO RELIEF UNDER THE FUNDAMENTAL MISCARRIAGE OF JUSTICE EXCEPTION, WHICH APPLIES WHERE A CONSTITUTIONAL VIOLATION HAS PROBABLY RESULTED IN THE CONVICTION OF ONE WHO IS ACTUALLY INNOCENT. APPLYING THIS FUNDAMENTAL MISCARRIAGE OF JUSTICE EXCEPTION, WHICH THE UNITED SUPREME COURT EQUATED WITH A CLAIM OF ACTUAL INNOCENCE, IT HAD PERMITTED PETITIONERS TO BE HEARD ON THE MERITS WHO OTHERWISE WOULD HAVE BEEN BARRED FROM RELIEF BY PROCEDURAL DEFAULTS.

THE MCQUIGGIN COURT EXPLAINED THAT, IN THESE AND OTHER SITUATIONS WHERE THE MISCARRIAGE OF JUSTICE EXCEPTION APPLIED. WHILE THIS CASE DIFFERS FROM MANY OTHER ACTUAL INNOCENCE CASES IN WHICH ONE RELY ON A SINGLE PIECE OF EVIDENCE (E.G., DNA EVIDENCE OR THE RECAN TATION OF THE ONLY VICTIM OR WITNESS), THE COURT MUST BELIEVE THAT THE MULTIPLE PIECES OF NEWLY DISCOVERED EVIDENCE PRESENTED HERE (INCLUDES THE BRADY EVIDENCE) AMOUNT TO AFFIRMATIVE EVIDENCE THAT UNQUESTIONABLY ESTABLISHES APPLICANT'S INNOCENCE. SUCH EVIDENCE AND TERMS HAVE BEEN DEFINED AS EVIDENCE THAT WAS NOT KNOWN TO THE APPLICANT AT THE TIME OF TRIAL, PLEA, OR POST-TRIAL MOTIONS AND COULD NOT BE KNOWN TO HIM EVEN WITH THE EXERCISE OF DUE DILLIGENCE. HAVING SAID THE ABOVE, APPLICANT HUMBL Y MOVE THIS COURT TO PROCEED BY EXAMINING ALL RELEVANT MATERIALS OF APPLICANT'S JUDICIAL AND JUDICIARY PROCEEDINGS WOULD BE DOING THE RIGHT THING. DANSBY V. STATE, 2014 TEX. APP. LEXIS 903.

CONCLUSION

FINALITY MUST BE REALIZED AT SOME POINT IN ORDER TO ACHIEVE A SEMBLANCE OF EFFECTIVENESS IN DISPENSING JUSTICE, AND AT SOME JUNCTURE JUDICIAL REVIEW MUST STOP BY RELEASING THIS INNOCENT MAN! WITH ONLY THE VERY RAREST OF EXCEPTIONS; WHEN THE SYSTEM HAS FAILED A DEFENDANT'S IMPRISONMENT WITHOUT REVIEW WOULD AMOUNT TO A GROSS MISCARRIAGE OF JUSTICE.

RIDGEVILLE, S.C.
OCTOBER 16, 2015

RESPECTFULLY SUBMITTED,

31 Hamid Demmirio

MR. HAMID DEMMIRIO #115800
LIEBER CORR. INST. EA-8
POST OFFICE BOX 205
RIDGEVILLE, S.C. 29472

CERTIFICATE OF SERVICE

I, HAMID DEMMIRIO, HEREBY CERTIFY THAT I HAVE CAUSED TO BE SERVED TO THE BELOW NAMED TRUE AND CORRECT COPIES OF THE FOREGOING DOCUMENT VIA THE UNITED STATES PRISON MAIL SERVICE AND U.S. POSTAL SERVICE.

MRS. JESSICA E. KINARD
DEPUTY ATTORNEY GENERAL
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211

S.C. SUPREME COURT
MR. DANIEL SHEAROUSE, CLERK
1231 GERVAYS ST., BOX 11330
COLUMBIA, S.C. 29211


RICHLAND COUNTY CLERK OF COURT
MRS. JEANETT MCBRIDE, CLERK
1701 MAIN ST., P.O. BOX 2766
COLUMBIA, S.C. 29203

RIDGEVILLE, S. CAROLINA
OCTOBER , 2015

RECEIVED

OCT 21 2015

S.C. SUPREME COURT


MR. HAMID DEMMIRIO #115801

SWORN TO BEFORE ME THIS 16 OF
OCTOBER, 2015

S/  (L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES _____



ALAN WILSON
ATTORNEY GENERAL

September 18, 2015

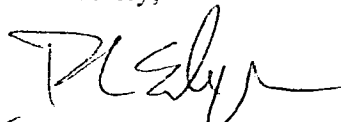
The Honorable Alison Renee Lee
PO Box 192
Columbia, SC 29202-0192

Re: Hamid Demmirio, #115800 v. State of South Carolina
2013-CP-40-04121

Dear Judge Lee:

Enclosed please find a proposed original **Final Order of Dismissal** in the above-captioned case. If this Order meets with your approval, please sign it and send it back to our Office so that I can file it with the Clerk's office.

Sincerely,


Jessica E. Kinard
Staff Attorney

JEK/jcb
Enclosure

cc: Hamid Demmirio, #115800

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4004121

Hamid #1115800 Demmirio

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 28 September 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Hamid #1115800 Demmirio

Megan Harrigan Jameson

Hamid #1115800 Demmirio

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W McBride

SCANNED

FILED
SEP 28 PM 2:20
JEANETTE W MCBRIDE
CLERK OF COURT
RICHLAND COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Hamid Demmirio, #115800,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2013-CP-40-04121

FINAL ORDER OF DISMISSAL

JEANETTE W. McBRIDE
C.S.P. & G.S.

2015 SEP 28 PM 12:15

RICHLAND COUNTY
FILED

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed July 16, 2013. Respondent made its Return and Motion to Dismiss October 15, 2013, 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, this Court issued a Conditional Order of Dismissal filed October 16, 2013, 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 April 2, 2014, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Opposition to the Signed Conditional Order of Dismissal (signed October 16, 2013)," filed on January 30, 2014, Applicant asserted he is entitled to an evidentiary hearing to address his allegations of ineffective assistance of PCR counsel, because she failed to amend Applicant's first application to include an allegation that trial counsel was ineffective for failing to make a closing statement at the guilty plea. He alleges that this is newly-discovered evidence found during the earlier PCR process, though he does not specify which of his prior PCR applications allegedly revealed this information. Applicant summarily argues that,

because the State has not conclusively refuted that this occurred, he is entitled to an evidentiary hearing. This Court finds these allegations meritless and dismisses them with prejudice.

The new evidence that Applicant offers probably would not “change the result if a new trial was had.” Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Furthermore, the Applicant could have raised these issues during his prior PCR when he began to believe that his counsel’s performance was problematic. Therefore, this issue cannot be raised again in this PCR, and it is dismissed as being successive. Further, Applicant filed this application approximately twenty-six (26) years after his conviction, and filed several PCR and habeas corpus claims in the interim. This is, certainly, outside of the statute of limitations to file, and Applicant has not presented a genuine issue of material fact that would support re-hearing this issue. Additionally, Applicant argues that he received ineffective assistance of PCR counsel, though this case does not present a situation in which Martinez v. Ryan, 566 U.S. ___, 132 S. Ct. 1309 (2012) governs or provides relief. Martinez applies to federal habeas corpus actions, and does not affect the way that South Carolina courts interpret and apply the post-conviction relief statutes. The Court also finds that the significant amount of time between Applicant’s conviction and application present a situation in which the doctrine of laches applies, and therefore time-bars a possible review of the application.

Applicant also filed an amendment to his PCR application along with his response to the conditional order. He wishes to add the following grounds:

1. “Actual innocence claim.”
2. “The Petitioner also moves to ‘overcome’ the state’s procedural bar based upon the recent landmark case of McQuiggin v. Perkins, 133 S.Ct. 1924 (2013) which held that actual innocence, if proven, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, as it was in Schulp and House, or, as in our case at bar, expiration of the statute of limitations.”

- a. Applicant believes that SLED has information that he never received and wishes counsel be appointed to subpoena and review these documents to show actual innocence.

The Court finds that both of these issues are discussed thoroughly above, as they do not meet the requirement for consideration as newly-discovered evidence or to surpass the bar as successive or outside the scope of the statute of limitations, and that neither presents a genuine issue of material fact that would warrant a hearing on the matter.

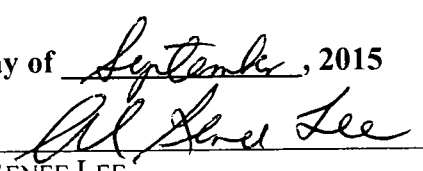
Accordingly, this Court finds the current application fails to state a claim which creates any genuine issue of material fact for this Court to consider.

This Court has reviewed Applicant's responses to the Court's Conditional Order of Dismissal 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 further finds that Applicant's current application is successive to Applicant's previously applications and that Applicant's current application was filed outside the statute of limitations.

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 advises 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. 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 24th day of September, 2015


ALISON RENEE LEE
Chief Judge for Administrative Purposes
Fifth Judicial Circuit

Columbia, South Carolina

MR. HAMID DEMMIRID #115800
LIEBER CORR. INST. EA-8
POST OFFICE Box 205
RIDGEBVILLE, S.C. 29472

RECEIVED

OCT 16 2015

MAILROOM
LIEBER CI

SOUTH CAROLINA SUPREME COURT
ATTN: MR. DANIEL SHEAROUSE, CLERK
1231 GERVAIS ST., BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

FOR LEGAL USE ONLY