

November 9, 2015

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NOV 13 2015

Thomas Lowery, #83240
KER.CI/HD235
4848 Goldmine Hwy.
Kershaw, SC 29067

S.C. SUPREME COURT

S.C. Supreme Court
Daniel E. Shearouse, Clerk
P.O. Box 11330
Columbia, SC 29211

RE: Rule 60(b) Motion, SCRCF, to set aside Order 2015-002101, dated October 21, 2015, pursuant to special procedure under White v. State, 208 S.E.2d 35 (1974).

Dear Sir Shearouse:

Enclosed are the following for filing:

1. Motion to Proceed in forma pauperis and affidavit in support thereof;
2. Verification;
3. Certificate of counsel;
4. Rule 60(b), Motion, SCRCF and Memorandum of Law in Support (original and 6 copies); and
5. Certificate of Service.

Thank you for your cooperation.

Sincerely,



Thomas Lowery

Enclosures

cc: Daniel F. Gourley, II
James I. Davis, Clerk

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

SET ASIDE ORDER FROM SUPREME COURT
Jean Toal, Chief Justice
For the Supreme Court

NOV 13 2015

S.C. SUPREME COURT

Appellate Case No. 2015-002101
Indictment Nos. 1976-GS-31-192 and-193

Thomas Lowery, #83240,

Petitioner,

v.

State of South Carolina,

Respondent.

MOTION TO PROCEED IN FORMA PAUPERIS WITHOUT PAYMENT OF COSTS
AND AFFIDAVIT IN SUPPORT THEREOF

I, Thoams Lowery, hereby apply for leave to proceed in forma pauperis in this action without prepayment of fees or costs or security therefor. In support of my motion I declare under penalty of perjury that the following facts are true:

1. I am the Petitioner in this action and I believe I am entitled to redress.
2. Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

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

SWORN or affirmed to and subscribed before me this

9th, day of Novemebr, 2015.

Catherine A. Combs
Notary Public

My Commission Expires: ~~My Commission Expires~~ December 22, 2018

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Thomas Lowery, #083240,

Petitioner,

v.

State of South Carolina,

Respondent.

SET ASIDE ORDER FROM SUPREME COURT
Jean Toal, Chief Justice
For the Supreme Court

Appellate Case No. 2015-002101
Indictment Nos. 1976-GS-31-192-and-193

VERIFICATION

I, Thomas Lowery, being duly sworn upon oath, depose and say that I have subscribed to the foregoing motion(s); that I know the contents thereof; that it includes every ground known for setting aside the Order challenged in this motion; and that the matters and allegations therein set forth are true.

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

Sworn to and subscribed before me this 9th
day of November, 2015.

Catharine A. Cameron
Notary Public

My Commission Expires: ~~My Commission Expires~~ December 22, 2016

THE STATE OF SOUTH CAROLINA
In The Supreme Court

SET ASIDE ORDER FROM SUPREME COURT
Jean Toal, Chief Justice
For the Supreme Court

Appellate Case No. 2015-002101
Indictment Nos. 1976-GS-31-192 and 193

Thomas Lowery, #83240,

Petitioner,

v.

State of South Carolina,

Respondent.

RULE 60(b) MOTION, PURSUANT TO SCRCP

PLEASE TAKE NOTICE, the Petitioner, Thomas Lowery, #83240, pro se moves to set aside Court Order dated October 21, 2015, heretofore entered and to enter a declaratory judgment, or a judgment to vacate on the grounds that structural errors of fact are harmful and prejudice to further sustain under White v. State, 208 S.E.2d 35 (1974).

JURISDICTION

The State Supreme Court has original jurisdiction based on the fact that Petitioner filed a notice of appeal from the denial and dismissal of his fourth application for PCR. Petitioner also submitted his explanation required by Rule 243(c), SC ACR. Whereby, Chief Justice Toal finding that Petitioner has failed to show there is an arguable basis for asserting the determination by the lower court was improper. Accordingly, she dismissed the notice of appeal in this matter. Additionally, she prohibited the Petitioner from filing any further collateral actions in the circuit court, including PCR actions and habeas corpus actions, as well as any motions relating to the previously filed collateral actions, challenging indictments 1976-GS-31-192 and 193 and the conviction thereon, or any motions in the underlying criminal case, including a motion pursuant to Rule 29, SCR-CrimP, without first obtaining permission to do so from this Court. Good reasons and special grounds exist why the original jurisdiction of the Supreme Court should be exercised.

CAUSE OF ACTION

Petitioner Lowery sought a writ of certiorari from the denial of his application for PCR. In addition, Petitioner pray that he seeks review under White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), special procedures where White v. State, review is sought. The record will show that he never had a direct appeal, nor was his direct appeal knowingly and intelligently waived.

Rule 15(b)(c), SCRCP allow an amendment at any time in furtherance of justice.. The rule allow amendment of pleadings to conform to the evidence, where the adverse party has not been misled and prejudiced. In fact, it's the Petitioner that has been misled and prejudiced for the past 40 years, because the PCR courts, the attorney general's office, and each appointed counsel for the Petitioner turned a blind eye to the fact Petitioner never had a direct appeal as required by SCACR 227(h), 1976.

Chief Justice Toal prohibited Petitioner from filing any actions in the circuit court for whatever reasons without considering that the Petitioner had not never raised a claim pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), statute of limitations, laches, res judicata, etc., are inapplicable.

SCRE, Rule 603 reads: Before testifying, **every witnesses 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.

Petitioner has a right to a direct appeal because he did not waive affirmation of every witness testifying to tell the truth, nor the judge or clerk from administering the oaths and affirmations to tell the truth as required by Rule 603, SCRE.

The record clearly shows that throughout the past 40 years there has not been any mentioned of a White v. State, review under special procedures.

WHITE V. STATE STATEMENT OF ISSUES ON APPEAL

1. WHETHER PETITIONER RIGHT TO A DIRECT APPEAL WAS NOT KNOWINGLY AND INTELLIGENTLY WAIVED.
2. WHETHER PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.
3. WHETHER BEFORE TESTIFYING EVERY WITNESS SHALL BE REQUIRED TO DECLARE THAT HE WILL TESTIFY TRUTHFULLY BY OATH OR AFFIRMATION ADMINISTERED BY THE JUDGE OR CLERK OF COURT IN PETITIONER'S GUILTY PLEA PROCEEDINGS UNDER RULE 603, SCRE.
4. WHETHER PETITIONER 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.

MEMORANDUM OF LAW IN SUPPORT THEREOF

Petitioner invokes the 6th and 14th Amendments of the U.S. Constitution Due Process Clause and the Equal Protection of the Law Clause. He never was afforded the opportunity or right to a direct appeal under White v. State, 208 S.E. 2d 35 (1974).

SCACRule require certiorari to review post-conviction relief actions for a special procedure under White v. State review.

Even if it is found that the Petitioner is not entitled to White v. State, review, a petition shall raise the question of waiver of the right to a direct appeal along with all other PCR issues Petitioner seeks to have reviewed.

Petitioner is aware that ignorance is no excuse in the law, and ignorance is no excuse for the judges, prosecutors, and appointed counsels in Petitioner's case over the past 40 years assigned to his case to turn a blind eye to the law.

The alleged confession of the Petitioner introduced in violation of Rule 603, SCRE at the plea hearing was legally inadmissible, as more fully appears from the points and authorities of Rule 603, SCRE in support of this motion served and filed herewith.

Petitioner seeks his White review as required by the foregoing and Rule 29(b), SCRCrimP.

CONCLUSION/RELIEF

WHEREFORE, Thomas Lowery, pray that he receive relief of a direct appeal under White review and SCRCrimP, 29(b) Rule, and that Chief Justice Toal's Order be set aside, along with any other relief to which he may be entitled be granted.

I declare, certify, verify, state under penalty of perjury that the foregoing is true and correct and that this Rule 60(b) Motion was placed in the prison mailing system on November 8, 2015. NOTE: Six (6) additional copies of the same are included.

Respectfully submitted,

s/ *Thomas Lowery*

Thomas Lowery, #83240
KER.CI-HD235
4848 Goldmine Hwy.
Kershaw, SC 29067

November 9, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

SET ASIDE ORDER FROM SUPREME COURT
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Appellate Case No. 2015-002101
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Thomas Lowery, #83240,

Petitioner,

v.

State of South Carolina,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Rule 60(b) Motion, SCRCPC complies with Rule 240, SCACR.

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

November 9, 2015

THE STATE OF SOUTH CAROLINA
In The Supreme Court

SET ASIDE ORDER FROM SUPREME COURT
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Appellate Case no. 2015-002101
Indictment Nos. 1976-GS-31-192 and-193

Thomas Lowery, #83240,

Petitioner,

v.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Thomas Lowery, the Petitioner, certify that I have served the Motion to proceed in forma pauperis, affidavit in support thereof, certificate of counsel, verification, and the Rule 60(b), Motion, SCRCP, along with Memorandum of Law in Support of the same dated 9th, of November, 2015, on the following parties this 9, day of November, 2015, by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to:

Daniel F. Gourley, II
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

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

By my signature below I affirm the same.

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

November 9, 2015

THOMAS LOWERY 083240
KER, C. I. HD 235
4848 Goldmine Hwy
Kershaw S.C. 29067

S.C. Supreme Court
Daniel E. Shearouse, Clerk of Court
P.O. Box 11330
Columbia, S.C. 29211

