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I, Claude Dunagin, Declare, in the presence of below-signed Notary Public on below-noted Date, as True, that I Did deposit an Original Draft of my Pro. Se. Petition & Opposition into the custody of the M.C.I. Mail Room Clerk (below-signed Notary Public) for said material to be immediately forwarded by sufficient U.S. Postage to:

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• Alicia Olive, Esq., Ass't. S.C. Atty. Gen.
Post Office Box 11549
Columbia, SC 29211

• Sworn and Subscribed to
before me this 18
day of Dec, 2015

/s/ Claude Dunagin 339745
Claude Dunagin # 339745
M.C.I. F.1 - 237.B
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McCormick, SC 29899

/s/ [Signature]
Notary Public, South Carolina
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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM SPARTANBURG COUNTY

Roger L. Couch, Circuit Court Judge

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DEC 21 2015

S.C. Supreme Court

CLAUDE DUNAGIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2015-001007

PRO. SE. PETITION &
OPPOSITION

• CLAUDE DUNAGIN, # 339745

• ALAN WILSON
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- ATTORNEYS FOR RESPONDENT

OVERVIEW

• Petitioner Claude Dunagin ("Dunagin") was directed by Order of this Court to submit a Pro.Se. filing in accords with Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (S.C. 1988), upon Review sought of the Honorable Circuit Judge Roger L. Couch's March 27, 2015 Order of Dismissal upon Dunagin's Post-Conviction Relief ("PCR") action, following a Johnson petition filed by Dunagin's appointed Appellate Counsel Susan B. Hackett, Esquire ("Appellate Counsel Hackett").

Thus, Dunagin's Pro.Se. Petition and Opposition to Appellate Counsel Hackett's 'Petition to be Relieved as Counsel' both follows.

ARGUMENT

I. - The PCR record does not support the finding of Judge Couch ("... Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel been more fully prepared or had additional time prior to the case being called to trial.") within Order, Pg. 8, ln. 15-17, where

(a) - Dunagin's PCR papers clearly points out specific matters which Dunagin asserts constitute Ineffective Assistance of Counsel [see APP. Pg. 581 - 583], and the law allows for liberal construction of Dunagin's pro.se. efforts to assert Ineffective Assistance of Counsel < see, Haines v. Kerner, 404 U.S. 519, 520-521, 92 S.Ct. 594, 595-596, 30 L.Ed. 2d 652 (1972) > even to the extent of Dunagin testifying to those specific matters during the PCR Hearing itself [see APP. Pp. 598, ln. 10 to 616, ln. 8]. The law regarding proof in a PCR proceeding derives from "... affidavits, depositions, oral testimony or other evidence..." < see S.C. Code Ann. § 17-27-80 (2014 Supp.) (quoted in part) >, and Dunagin submits that where the PCR record is quoted above as showing Dunagin

pointing to specific matters, to the best of his ability, to prove Ineffective Assistance of Counsel, the finding of Judge Couch is not supported by the noted PCR record.

(b)- As to the "... defenses that could have been pursued had Counsel been more fully prepared ...", *id.*, Dunagin states

(i)- Dunagin's PCR testimony is clear in alleging his Trial Counsel did not have "... enough case laws..." [see APP. Pg. 608, ln. 15-16] to argue for a legal defense in Dunagin's behalf on Directed Verdict motion, in light of state's facts showing that the unfinished structure fits not only under S.C. Code ANN. § 16-11-560, but is clearly outlined in Dunagin's PCR testimony [see APP. 600, ln. 19-24; Pg. 601, ln. 4-15; APP. Pg. 608, ln. 4-21] as proper for a Magistrate's Court charge. The law prior to Dunagin's trial defined a 'dwelling house' in terms of a 'structure' < see S.C. Code ANN. § 16-11-110(B) >, and since then any structure capable of protecting human occupancy from the elements is properly identified as a structure for purposes of Arson < see, e.g. State v.

Stone, 350 S.C. 442, 445-446, 567 S.E.2d 244, 246 (S.C. 2002) (defining 'structure' in terms of a 'dwelling house'); accord Moye v. State, 491 A.2d 18 (Table), 2010 WL 549615, * 2 (Del. Supr. 2010); People v. Labaer, 88 Cal. App. 4th 289, 290, 105 Cal. Rptr. 2d 629, 01 Cal. Daily Op. Serv. 2797 (Cal. App. 4 Dist. 2014) (finding incomplete mobile home not a structure, despite "... it had four sides, and each of these sides was enclosed by some material - two-by-four open wood framing or plastic visqueen sheeting with studs and insulation.") >.

Thus, Trial Counsel had adequate caselaws which could've better support the Directed Verdict position as relates to the 'Presumption of Innocence' defense Dunagin retained all through trial where the state's facts fail to show sufficient evidence of "design for human occupancy"; as Dunagin asserted in PCR Application pages, PCR testimony, etc., Trial Counsel's asserted 'Failures' qualify for the granting of PCR relief because the PCR record does not support PCR Judge's language of Dunagin 'failing to point to any specific matters' in light of things pointed out by Dunagin.

II. - Appellate Counsel Hackett's Petition to be Relieved as Counsel' should be Denied where

(a) - Dunagin, noting that the scope of Appellate Review, itself, requires "... any evidence of probative value to support post-conviction judge's factual findings..." < see Webb v. State, 281 S.C. 237, 237, 314 S.E.2d 839, 839, (S.C. 1984) >, and viewing Dunagin pointing out a matter within the PCR Order which is not supported by the PCR record (see ARGUMENT I, above), that Appellate Counsel didn't see, Dunagin's position is that Appellate Counsel may be able to take her time and glean the PCR Order, with the PCR record, and find other matters which Dunagin is unable to find, in order to show this Court that there is no 'evidence of probative value' supporting alleged findings of the PCR Judge. Thus, for purposes of Johnson, supra, Appellate Counsel's noted 'Petition' should be Denied.

CONCLUSION

· WHEREFORE, as Dunagin have asserted that the lower PCR Court's Order is not adequately supported by the PCR record, Dunagin submits that Appellate Counsel Hackett's 'Petition to be Relieved as Counsel' should be Denied, with Instructions for Appellate Counsel to review the PCR record again for any other finding of PCR Judge which is not supported by evidence.

Respectfully Submitted,

/s/ Claude Dunagin 339745

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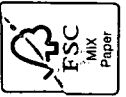
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