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DEC 18 2015

December 14, 2015

S.C. Supreme Court

Dear Honorable Clerk,

Please find enclosed the Original Notice of Appeal to the erroneous denial of an Improperly filed and Indexed PCR Application that was sent to you on April 16, 2014, and the 23rd.

I do hereby Appeal this Unconstitutional denial of Procedural Due Process of Law citing the 14th Amendment and and I respectfully move this Court to please Send the Honorable Maite' Murphy Chief Admin. Judge for the 1st. Judicial Circuit, PO Box 802 St. George, SC. 29477 a Copy and please return a Clock Stamped Copy of the Same back to the Applicant, he is Indigent. in the Self addressed Envelope enclosed for your ~~use~~ USE. And please send a Copy to MS Daniel Goortez Esq. ASST. Atty. General - P.O. Box 11549, Columbia, SC, 29211. So all Parties are Served.

Thank you.

Respectfully Requested

and

Merry Christmas

Noel Gray #307580

Noel Gray.


PS - I'm only afforded to make (2) copies due to my indigent status. One to you and one to the State Supreme Court. and a copy for § 2254 Habeas Action / U.S. Dept. of Justice - U.S. Bureau of Prisons. And the Exhibits are already in Court Record from previous Actions.

December 14, 2015

Dear Honorable Clerk,

Please find enclosed the Applicant's Motion / Notice of Appeal to the denial of a PCR Action that was not successive or over the Statute of limitations.

Also pursuant to S.C. App. Ct. R. 243(b); 203(b)(1) the Applicant has submitted a Sworn Affidavit in support of the erroneous Conditional Order of Dismissal that was a denial of due process of law under the 14th Amendment and enclosed is the Applicant's Exhibit Package that will show the Applicant was entitled to a PCR Hearing that was unconstitutionally denied.

 ⇒ Also please clock stamp the provided copy and return it in the pre stamped and addressed envelope for your convenience.

Respectfully Requested
Noel Gray #307590
Merry Christmas!

Also, the Applicant is indigent and moves for Appointment of a Criminal Counsel. please, pursuant to Rule 71.1(9) SCRCP, and All parties are served.


Due to the quantity of documents, I will send you a copy to clock stamp for me on Wednesday.

December 14, 2015

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Respectfully Requested
Noel Gray #307590
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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Noel Gray # 307590

) C/A 2014-CP-02-_____ Application

Applicant.

) Sent to Clerk on April 16, 2014

) IMPROPER JUDGED NO. 2015-CP-02-01730

) NOTICE OF APPEAL pursuant to

) S.C. App. Ct. Rule 243(b); SC App. Ct. R. 203(b)(1).

) and the Sixth and Fourteenth Amendments.

) and Rule 71.1(f) SCRPC; Rule 227 SCACR;
and Appointment of Counsel Rule 71.1(g) SCRPC.

RECEIVED

DEC 18 2015 V.

S.C. Supreme Court

STATE OF SOUTH CAROLINA

Respondent.

Comes NOW BEFORE THIS COURT, Applicant Submitting his Notice of Appeal pursuant to SC. App. Ct. R. 243(b) and SC. App. Ct. R. 203(b)(1) and the Sixth and Fourteenth Amendments to the erroneous conclusions of an illegal and UnConstitutional denial of the Uniform Post Conviction Relief procedures Act and a Improper filed PCR Application pursuant to Rule 71.1(c) SCRPC.

The Honorable Judge Maite' Murphy was warned of her signing an erroneous Order that contained Fraud, Acts of bad Faith, and perjury and Misappreciation of relevant Material facts on December 1, 2015 by a Rule 60(b)(3);(4) Motion, but signed any way violating the applicant's Procedural and Substantive due Process citing the 1st, Sixth, Eight and Fourteenth Amendments and the Respondent was served as well.

The Applicant here in Appeal's this, erroneous decision!

Respectfully Submitted.
Noel Gray #307590

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Noel Gray # 307590
Applicant,

) 2014-CP-02-_____ Sent to the

) Clerk's office on April 16, 2014

) Improperly Indexed No. 2015-CP-02-01730

v.

) SWORN AFFIDAVIT OF APPLICANT pursuant to

) SC. App. Ct. R. 243 (C)

STATE OF SOUTH CAROLINA)

Respondent)

I Noel Gray #307590 do hereby submit this Sworn Affidavit pursuant to SC. App. Ct. R. 243(C) and the information contained herein are true and correct to the best of my knowledge and belief's under the penalty of perjury I do hereby submit.

The Applicant received a PCR Hearing on February 2, 2009 before the Honorable Doyet A. Early III Circuit Court Judge of Aiken Co., and he was represented by Bradley L. Boni, Esq., a Real Estate Attorney.

In this hearing the following issues were raised.

1. Ineffective Assistance of Trial Counsel;
2. A Violated Federal IADA Contract;
3. Subject Matter Jurisdiction

The applicant testified that trial counsel lied to the court regarding the IADA and the Applicant corresponded to the Judge at the hearing by written letter.

On April 6, 2009 the Honorable Judge dismissed the

PCR ACTION 2008-CP-02-0734 with prejudice in which was unconstitutional and a denial of due process. the (IADA) is a Jurisdictional issue and Subject Matter Jurisdiction can not be waived by any party.

The PCR Counsel never filed the Rule 59(e) SCRPC as instructed by the Applicant on January 15, 2009 "Material Fact", in which violated due process and Rule 71.1(d) SCRPC.

The Applicant was appointed MS. Wanda H. Carter Esq. of the SC Ct. Appellate Defense. pursuant to SC App. Ct. Rule 243(9) She failed to raise the (IADA) on Writ of Certiorari and this violated due process of law and caused this issue to be procedurally barred. In which you can't procedurally bar a jurisdictional claim when the Sentence and Conviction is void due to lack of Subject Matter Jurisdiction. citing the 6th and 14th. Amendments to due process and the Fast + Speedy Trial Act

The Applicant's Federal Habeas Corpus was a total loss due to Court Appointed Counsel's misrepresentation / Inadequate Skills. citing: State v. Stucky Supra. Once Counsel is obtained, the applicant's hands are tied.

On October 11, 2011 the applicant received a Rule 5 Brady package from Trial Counsel that contained the letters discussed in the initial PCR "See enclosed PCR Transcripts". 2 plea offers that were never disclosed to the applicant and the (IADA) Contract that was not at the Hearing as well.

On December 9, 2011 the applicant filed a PCR Application regarding these issues see 2011-CP-02-02776. but Judge Early covered

for Trial Counsel and falsely denied this action on July 5, 2012 even after material facts were provided to support this action pursuant to Coats v. State, Supra,

The Applicant Appealed this erroneous decision and it was unconstitutionally denied again by the SC Supreme Court on April 30, 2012, and a Remittitur was sent on September 19, 2012.

On September 24, 2012 the applicant sent a Rule 29(b) SCRCrim P. to be filed in the lower court based on After-discovered evidence and with material facts to support it was erroneously denied by the Honorable Judge Early in which was a conflict of interest and a clear violation of Due Process of law. Also it clearly supports that the Judge is a friend of the Attorney and the Respondent, on November 30, 2012.

On December 4, 2012 the Notice of Appeal to the Court of Appeals was sent and filed on December 7, 2012.

On December 18, 2012 the SC Court of Appeal's issued a appellate Case No. 2012-213607

and on the same date a notice that because of no hearing, there were no transcripts to be ordered.

On January 11, 2013 the Appellate defense appointed Mr. Robert M. Pachak, Esq. Appellate defense to represent the applicant.

On March 11, 2013 the Applicant filed to have Judge Early recused off the bench due to his abuse of Discretion, and the applicant did not receive the Order that is required by law.

On April 12, 2013 the Appellate Counsel filed his Initial Brief pursuant to Davis v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) "failure to communicate a plea offer to a client constitutes deficient performance, and on this Brief Counsel placed a Designation of Matter To Be Included In Record On Appeal.

On November 23, 2014 a Adden Dum was also amended to the lower court pursuant to Missouri v. Frye, 132 S.Ct. 1399 (2012); Applicants Objections to Respondent's Return and Motion To Dismiss and Conditional Order of Dismissal sent on July 21, 2014 and the Adden Dum pursuant to Bell v. State, --- S.E.2d. ---, (2014) WL 5654265 S.C. Ct. App.

On July 8, 2013 the Applicant had the 2013-CP-02-0478 PCR Application Dismissed pursuant to Rule 71.1(b) due to the direct Appeal pending and was filed on July 12, 2013.

On January 29, 2014 the Direct Appeal was complete and on February 24, 2014 the Remittitur was sent.

On February 4, 2014 Appellate Counsel sent the applicant an Official Correspondence instructing him to file a PCR Application "Counsel Provided within the Year.

On April 23, 2014 the Applicant sent a Motion to Replace the 2013-CP-02-0478 PCR Application dated February 27, 2013 with the New Application "da which she did not", and the Subject Matter Jurisdiction and Supplemental Jurisdiction Amendment dated January 23, 2014 with attached Exhibits, that was filed on April 24, 2014 but the new application was not filed.

Several times the applicant has corresponded to the clerks office, Judge Buckner of the 14th Cir. and the S.C. Supreme Court of this UnConstitutional issue that has deprived an indigent of his due process of Rights to the Uniform Post-Conviction Relief Act and the 14th. Amendment to Procedural due process of law, and time after time the applicant was denied even after material facts support.

Because of the Clerk of Court in the Second Judicial Circuit Court and the Respondent's "illegal and UnConstitutional" Actions that deprived an indigent his due process of law and not giving him a full and fair opportunity to present his claims and evidence in a evidentiary hearing, violated due process see also the Respondents Order, on page 5 of 9 at #7; and Page 6 of 9 at 10 this Court will see the Respondent Cut the April 24, 2014 Motion to disrupt the Honorable Murphy from properly administering a sound ruling in which violated Rule 407 Professional Conduct Rule 3.3 Order Toward the Tribunal at (a) (1); (2); (3); (4); Rule 3:4 Fairness to Opposing Party at (a) - (D); Rule 3.5 Impartiality and Decorum of the Tribunal at (a); (c); Rule 3.8 Special Responsibilities of a Prosecutor at (a); (b); (c); Rule 4.1 Truthfulness in Statements to Others, at (a); (b); and Rule 8.4 Misconduct, at (a) - (g). SC App. Ct. Rule.

Every thing contained here in is part of material facts that is on record / Documents that are filed in the lower Court.

Pursuant to JACKSON, 489 S.E.2d at 916 at N. [1].

the applicant is suffering continuing consequences as a result of his invalid sentence and conviction;

The After Discovered Evidence that was filed in the 2011-CP-02-02776 PCR Application was entitled to A Evidentiary Hearing because it did fall under the discovery Rule and it was filed within the One year after the discovering of Trial Counsel's serious Unconstitutional and illegal errors, citing: Costs v. State, - 575 S.E.2d 557 (S.C. 2003).

The issues raised in the new April 16, 2014 PCR Application does consist of legitimate Cognizable Claims pursuant to S.C. Code Ann. § 17-27-20 (a)(1)-(6)

The PCR Application was sent to the lower Court within the One year after the remittitur was sent to the lower Court from an appeal S.C. Code Ann. § 17-27-45 (A) (2003).

The Clerk of Court violated Rule 21.1(c) by not filing the Application as an independent action and properly indexing the Application to its April 24, 2014 filing.

The Respondent failed to file a Return within the allotted 30 days time pursuant to S.C. Code Ann. § 17-27-40 (2003) . and His delay deprived the applicant of a full and fair opportunity to present his factual Material Evidence in to a PCR Hearing citing: Kneece v. State, 236 S.E.2d 746, 747 (S.C. 1977) (per curiam) (citing: Herring v. State, - 206 S.E.2d 885 (S.C. 1974) (per curiam) see also Slezak v. South Carolina, - No. 2003-CP-10-766, (2003 WL 25459562) at *8 (S.C. Com. Pl. Nov. 24, 2003-

(Citing Kneese with approval).

Complaints have been sent to the lower court, Judge Buckner, Judge Murphy, S.C. Court Admin., and the S.C. State Supreme Court, and due to the lower court violating the Uniform Post-conviction Relief Act Rules of Civil procedure, the Respondent committing fraud, misrepresentation of relevant material facts, and perjury, those issues were administered into a Direct Appeal.

The State and the Respondent is aware that the applicant is confined in the South Carolina Dept. of Corrections under violated Federal Law and Constitutional Amendments.

And the applicant has given the lower court a full and fair opportunity to review the claims and provide any necessary relief E.g. Rose v. Lundy, 455 U.S. 509, 515-16 (1982), and now he's giving the State Supreme Court its chance to correct these unjustified and illegal denial of due process issues pursuant to O'Sullivan v. Boerckel, 526 U.S. 838, 842 (1999), in which makes this legal attempt one full round of the state's established appellate review process in which makes the exhaustion doctrine "satisfied and fairly presented", Id. at 848 "the exhaustion doctrine ... turns on the inquiry into what procedures are available under state law Id. at 847 also citing: In re Exhaustion of State Remedies in Criminal and Post-Conviction Relief Cases, 471 S.E.2d-454 (S.C. 1990) [hereinafter, In re Exhaustion], the South Carolina Supreme Court stated:

[In all appeals from criminal convictions or post-conviction-

Relief matters, a litigant shall not be required to petition for rehearing and Certiorari following an adverse decision of the Court of Appeals in order to be deemed to have exhausted all available grounds "State Remedies" respecting a claim of errors. Rather, when the claim has been presented to the Court of Appeals or the Supreme Court, and relief has been denied, the litigant shall be deemed to have exhausted all available State Remedies.

Therefore, the applicant here in moves this Court to Reverse the Honorable Murphy's erroneous conclusions that material facts clearly support in an UnConstitutional Order and Order the lower Court to Grant a PCR Hearing pursuant to Rule 71.1(d) and Sherper v. State, Supra, and appoint a proper-Criminal Law Counsel, that can adequately argue a Criminal Conviction citing: Sutton v. State, 606 S.E.2d 779, 781- (S.C. 2004) overruled on other grounds by Bray v. State, 620 S.E.2d 743- (S.C. 2005). PCR proceedings are Rooted in a Criminal Case, and important Constitutional protections and Criminal law concepts are regularly implicated, and to instruct the Counsel to raise all arguable issues despite of Counsel's beliefs the appeal is frivolous and requiring, by Statute, Court appointed Counsel for an indigent applicant who is granted a hearing. Id. citing Wade, 559 S.E.2d - 94847.

Respectfully Submitted

Moel Gray #307590
Pro-se Applicant.

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Noel Gray, #307590) C/A NO: 2014-CP-02-_____ Sent to
Applicant,) the Lower Court on April 16, 2014
y) IMPROPERLY INDEXED NO. 2015-CP-02-01730
y) APPLICANT'S EXHIBIT PACKAGE + NOTICE OF
y) INTENT TO APPEAL PER ORDER and
STATE OF SOUTH CAROLINA,) CONCLUSION at # 15
Respondent)

The contents herein are true correct copies of official records
and documents:

1. Received the Conditional Order on December 10, 2012.
2. Unconstitutional denial of Rule 29(b) SCRCrimp. on November, 30, 2012.
3. Notice of Intent to Appeal Rule 29(b) SCRCrimp on December 4, 2012.
4. Received Appellate NO. December 18, 2012;
5. No Hearing No Transcript dated December 18, 2012;
6. Appointed Counsel dated January 11, 2013;
7. Recusal of Judge Early dated March 11, 2013;
8. Appellate Brief dated April 12, 2013;
9. Motion to dismiss PCR Application 2013-CP-02-0478 pending Appeal dated July 12, 2013;
10. Appeal 2012- 213607 Complete January 29, 2014;
11. Remittitur dated February 24, 2014;

12. April 23, 2014 Motion to Replace the 2013-CP-02-0478 Application dated February 27, 2013 with the New PCR Application sent on April 16, 2014 filed on April 24, 2014 ;

13. Appellate Counsel's Official Correspondence dated February 4, 2014 ;

14. New PCR Application that was originally sent on March 20, 2014 ; and Conclusion

15. 2008-CP-02-0734 PCR Transcript to show letters and IADIA issues see page 279 a + 2-11. and trial Counsel lying to Judge see page 283 a + 8-10 ; 25 ; page 286 a + 20-24 Material facts that were found on October 11, 2011 and brought to the Courts Attention on PCR Action (2011-CP-02-02776) . pursuant to Lahay v. Armontrout, - 923 F.2d 578 (CA 8 1991) petitioner / applicant is entitled to a Evidentiary Hearing to review the findings and hereby moves this Honorable Court to vacate the Order of Dismissal and Remand for a PCR Hearing.

Executed this 14th day of December, 2015

Respectfully Submitted

Noel Gray # 307550

Noel Gray # 307550

waterco # 281

Broad River Corr. Inst.

4460 Broad River Rd

Columbia, SC 29210

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN)

SECOND JUDICIAL CIRCUIT

Noel Gray, #307590)

CIA NO. 2014-CP-02- _____ Sent to

Applicant,)

the Clerk's Office on April 16, 2014.

) IMPROPERLY INDEXED NO. 2015-CP-02-01730

v.)

) CERTIFICATE OF SERVICE.

RECEIVED

State of South Carolina,)

DEC 18 2015

Respondent.)

S.C. Supreme Court

I Noel Gray #307590 has placed the Original and a true Copy to the Supreme Court of South Carolina with a True Affidavit in Support of the erroneous conclusions of the Honorable Murphy's erroneous denial of the 14th Amendment to the Post-Conviction Relief Procedures Act, and the Clerk of Court of Aiken County and the Respondent has here by been sent this 14th day of December, 2015.

1. THE Honorable Maite Murphy Chief Admin. Judge 1st Cir. P.O. Box 802, St. George S.C. 29417 "Clerk Served" Indigent
2. Ms. Daniel Gowley Esq., Asst. Atty. General P.O. Box 11549 Columbia, SC, 29211 "Clerk Served" Indigent
3. The Honorable Clerk of Court Second Judicial Circuit, P.O. Box 583 Aiken, S.C. 29802-0583.
4. The Supreme Court of South Carolina Honorable Clerks Office P.O. Box 11330, Columbia, SC - 29211

