State of South Carolina
County of Horry
Damien O Johnson

v

South Carolina

In the Court of Common Pleas
Fifteenth Judicial Circuit
Docket no 2014-CP-26-5195

Notice of Motion of Right to File
Objections to Final Order of Dismissal

Honorable Judge Seals,

It appears the respondent has misinterpreted the document titled Notice of Right to File Objections to Conditional Order to dismiss and return and Motion to dismiss. The petitioner had believed the arguments had been clearly and succinctly expounded upon. Yet please please allow me to clarify upon the misinterpretation of the facts, by the respondent.

First the petitioner contests the statement that he argued the grand jury didn't meet on the date indicated on his indictment. When in fact the petitioner asserted that the grand jury didn't lawfully convene on October 21, 2010 and no indictment may be true billed by a grand jury. When circuit court lacks jurisdiction since grand jury's jurisdiction is coextensive with criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry. State v Mcclure 289 SE2d 158 (1982) State v Funderburk 191 SE2d 520 (1972) State v Wheeler 193 SE2d 515 (1972)

The petitioner contests the respondents statements that the petitioners guilty plea was involuntary because counsel didn't prepare him for the plea. When in fact the petitioner asserted to the record that his plea was involuntary on the basis of his counsel, Barbara Pratt. On the basis of her stating, that because of the petitioners most recent arrest, his name was elevated to #1 on the trial roster, She was not prepared for trial and because she wasn't prepared, the petitioner needed to concede to the plea. She also stated if the petitioner did he would reciev the minimum of five years, which was predicated by a witness's affidavit of veracity. Which was submitted by Jacqueline Campbell, see Bannister v State 509 SE2d 20 substantiating this fact. Pursuant to the precedent case law US v Moore 100 S Ct. 687 the Supreme Court held a guilty plea that is entered because defense counsel is unprepared for trial is involuntary. Also in Ray v State

401 S.E.2d 151 the Supreme Court held a defendant induced to enter a guilty plea, On the basis of erroneous advice by counsel, denies the defendant effective assistance of counsel and his guilty plea was involuntary see also Hammond V U.S. 528 F.2d 15; Cook V U.S. 461 F.2d 530. The petitioner asserts that counsel prejudiced his case based on these facts, and the petitioner would not have plead. If not for her coercive statements while the petitioner was inebriated and under duress. He truly wished to proceed trial.

Petitioner also asserted that he stated on the record in court, that he was in fact under the influence of prescription narcotics, refer to the transcript pg 4 Line 11 and the petitioners counsel was ineffective for not requesting a continuance S Keen V State 481 S.E.2d 129 which prejudiced the petitioner on the basis of him being in a weakened or incompetent state of mind during the hearing. Which precluded him, in assisting or presenting an adverse challenge for his defense. Counsel further prejudiced the petitioner by not requesting a Blair hearing State V Blair 273 S.E.2d 536 which states a criminal defendants failure to request a competency hearing did not waive his right to such a hearing. Where a defendants sanity is a crucial issue thraghout his trial. The word shall is construed as permissive to effect legislative intent (Emphasis added) Particularly when a statute directs the court to determine certain matters §44-23-410 through 430. These statutory provisions are usually regarded as mandatory. Where power or duty to which it relates is for security or protection for private rights. Irrational behavior demeanor at trial, prior medical history or any opinion are all relevant. Even one alone, is sufficient for a hearing. Which is designed to protect the accuseds right to a fair trial, by due process determination. see also Drope V Missouri 95 S.Ct. 896 Supreme Court held a defendant must be mentally competent to stand trial. Without further inquiry into his competency he has been denied a fair trial. During the petitioners intoxication, counsel and officers of the court took advantage of the petitioners state of mind prejudicing, the fairness, and equal protection of his rights The petitioner wished to proceed to trial which is predicated by Barbara Pratt in exhibit (P).

The petitioner also refutes respondents statement that the petitioner argued the court lacked jurisdiction because he didnt have a preliminary. However the petitioner actually asserted that the court lacked jurisdiction pursuant to the S.C. Constitution Article V §11 S.C. code Ann §22-5-320 which states that since the statute acts to deprive the court of general sessions of its original concurrent jurisdiction over criminal cases, without also granting exclusive jurisdiction of the same cases to the magistrate courts. In that statute it authorizes a magistrate to hold a

preliminary hearing only when the crime charged is beyond his jurisdiction and the magistrate cannot possess the exclusive jurisdiction required by Article V§11 in a matter that is beyond his jurisdiction. The striking of §22-5-320 renders meaningless and void the remainder of the statutes. Which set out procedures incident to the holding of a preliminary hearing 22-5-320 through 340. What the petitioner was attempting to expound was that his counsel was cognizant of this. Counsel maliciously refused to attend which was detrimental. Without counsels attendance at the preliminary, it acted as a waiver. When in fact the court actually lacked probable cause State v Brown 405E 296

Petitioner also refutes requesting an appeal with vehemence. On the basis he was issued an appeal and the Court of Appeals which is equivalent to the Supreme Court dismissed it. Refer to In re Exhaustion of State remedies in Criminal and PCR cases 471 SE2d 454 (1990) which states that a litigant is not 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 state remedies respecting a claim of error. Rather when the claim has been denied, the litigant is deemed to have exhausted all available state remedies. see State v McKennedy 559 SE2d 850, 854 (2002). Petitioner doesn't wish to go through this again when he now has the option of pursuing a State Habeas Corpus of Federal Habeas Corpus.

The petitioner further asserts that he does not wish to have a belated appeal. On the basis of inordinate delay and the action of granting a belated appeal would also aver further dilatory actions on the states behalf. Albeit the petitioner is entitled to a belated appeal. The basis of this ground is that the petitioner has now been prejudiced by the loss of evidence, memories, witness' and also deaths. The only acceptable relief is vacating the conviction, immediate release and a new trial for the petitioner.

The petitioner now asserts the subsequent grounds as sufficient reasons why the PCR application wasn't untimely. First the petitioner asserts that he did not waive his right to his direct appeal, so the 1 year statute of limitations doesn't apply; Dearbury v State 625 SE2d 212. to waive a direct appeal, a defendant must make a Knowing and intelligent decision not to pursue his direct appeal. see also Davis v State 342 SE2d 60 (1986) Allows the petitioner to clarify upon the facts. The petitioners trial counsel properly filed a direct appeal, but refused in filing a Anders 87 SCt 1396 or Johnsons brief, with a argument for appeal or that would withdraw her as counsel Contemporaneously she also refused in requesting a transcript, nor maintained compliance with rules 602; 26 45 CRAP. On this basis, Ms Pratt was deemed appellate counsel until an appropriate withdrawal was approved. This did not occur until July 22, 2014 predicated by exhibit (P). Which evinces that the

petitioner was not afforded the opportunity to perfect his direct appeal, present an adverse challenge and a meaningful appellate review. Which essentially avers that the petitioner proceeded prose and was was without counsel during his direct appeal. Rogers v State 995E2d 761 effective representation of counsel is a requisite of due process and the 5th amendment. The allegation of denial of such representation sets forth prima facie violation of constitutional rights that require a evidentary hearing.

Where counsel is absent during critical stages of defendants trial. Prejudice is presumed harmless error analysis is precluded McKnight v State 465SE2d 352. Retained counsel have a express duty to assist their clients to properly perfect their appeals Frasier v State 306 SC. 158, 410SE2d 572 (1991) See also Cherry v State 386 SE2d 624 Nelson v Peyton 415 F2d. 1154. A defendant is constitutionally entitled to the effective assistance of counsel on direct appeal Evitts v Lucey 105 S Ct. 830 (1985) see also Jones v Barnes 463 US 745 103 S Ct. 3308 it is appellate counsels duty to raise issues on appeal. After a client has been convicted and sentenced in all cases. counsel has a duty to make certain that the client is fully aware of the right to appeal and if indigent assist in filing the appeal In re anonymous member of the bar 400 SE2d 485 Supreme Court Justice Waller held the policy would be frustrated. If the 1 year statute of limitations for PCR claims applied where the applicant was denied his direct appeal due to ineffective assistance of counsel and denied his right to PCR because of 1 year statute of limitations see also State v Odom 523 SE2d 753, Austin v State 409 SE2d 395 (1991) which were extended to Wilson v State 559 SE2d 581 (2002) in which Supreme Court Justice Toal held that the defendant was entitled to a evidentary hearing and also stated the same antecedent statement as Supreme Court Justice Waller. The petitioner is entitled to one fair bite at the apple, supra. Austin see also Paxton v State 528 SE2d 422

Secondly the application wasn't untimely pursuant to SC code Ann § 17-27-45(C). Which states if the applicant contends that there is evidence of material fact not previously presented and heard that requires vacation of the conviction or sentence. The application must be filed under this chapter within one year of the date of after the actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence, December 10, 2014 the petitioner submitted after discovered evidence on the basis of his trial transcript. Which wasn't submitted by appellant counsel during the direct appeal. Analogous to Anders v Calif. 87 S Ct. 1396 Counsel refused requesting the transcript predicating no conscientious examination was made by counsel on petitioners behalf. Counsels action rivince a denial of equality and

fair procedure.

Petitioner took it upon himself and requested the transcript from Circuit Court Reporter Dixie Coe Ebanks. Which she was in receipt of on January 29, 2014. Petitioner had someone pay 75.00$ on his behalf and wasn't in receipt of the transcript until a couple of months later, therefore meeting the 1 year limitation. Subsequent to it reception petitioner discovered it contained evidence of material fact stated by the petitioner and his counsel which substantiated that the plea was involuntary. On the basis of the petitioner alerting the court of his drug use without counsels request for a continuance or Blair hearing. Which should be ascertained as prejudice on the basis of petitioners weakened and impressionable mind. Furthermore the transcript covered that the petitioner alerted the court that he was told how to answer the inquiries of Judge John pg 9 line 24 of the transcript and the long pause by the court and the petitioner prior to being motioned and told by trial counsel to retract his statement. This would predicate the courts refusal to continue the proceedings at a later date. This allegation can be substantiated by a subpoena duce tecum of the court proceedings on March 5, 2012 in the courts video and audio repository or the court reporter. Which will invalidate the plea and overturn the conviction. Last the petitioner learned that his counsel stated perjured testimony on the record pgs' 12, 13 Lines 25, 1-4 where she stated "the magistrate court charges from the bar were dismissed. I believe the victims did not appear for that and my client did plead to the charges surrounding his arrest and paid a fine on those. In reality the petitioner never plead to anything or paid any fines these are facts, that can be substantiated. All charges were disposed of August 2, 2011. Which evinces counsels perjured testimony prejudiced the petitioner with material that was fabricated. The court had no probable cause. Petitioners counsel insinuated that the court did and unduly influenced the petitioner to say yes with a threat of thirty years which can be substantiated by Jacqueline Campbells affidavit.

Also the petitioner wishes to assert the doctrine of equitable tolling as a basis that the PCR wasn't untimely. Specifically on the basis of the petitioner not recieving the remittitur. Those who did were Robert Michael Dudek, Salley W Elliot and Barbara Wilson Pratt see exhibit (C). The petitioner wishes to impute fault on Ms. Pratt for this reason. The petitioner only became cognizant of the remittitur, subsequent to filing a untimely Motion to Reconsider. on December 30, 2013. Ergo, having to request leave to file a rule (606) from the SC Court of Appeals. Consequently recieving a response stating the Court of Appeals no longer had jurisdiction. see exhibit (A). as well as that Courts statement concerning no right to hybrid representation. Petitioner was cognizant that issues of ineffective assistance

of counsel couldn't be raised, if represented by the same trial counsel Carter V State 362 S.E.2d 20. So the petitioner Motioned to Relieve counsel with Judge John whom refused the Motion see exhibit (B) March 6 2014. Plaintiff was prevented from asserting a claim by some kind of wrongful conduct Fisher V Johnson 174 F3d 710. Petitioners counsel wasn't permitted to be relieved until July 14, 2014 after a complaint was made to Supreme Court Justice Toal On these basis, Judge Johns refusal to allow the petitioner to relieve his counsel as well as petitioners counsel not alerting him of the remittitur. Which evinces extraordinary circumstances encumbrancing his right to timely file. The record avers that the petitioner had been diligently pursuing his due process rights. Which should entitle him to equitable tolling Pace V Digulielmo 125 S.Ct. 1807. A court will sometimes address the merits of a claim that it believes was presented in a untimely way Carrey V Saffold 122 S.Ct. 2134 see also Pettinato V Eagleton 446 F Supp 2d 641 (2006)

Additionally the petitioner wishes to assert that there is no statute of limitations when a party seeks to set aside a judgement due to fraud upon the court Checoing V Ford Motor Co 354 S.C. 72 579 S.E.2d 605. To secure equitable relief from a judgement on the basis of fraud upon the court. The fraud must be extrinsic. Extrinsic fraud, is fraud that induces a person not to present a case, or deprives a person of the opportunity to be heard. Subornation of perjury by an attorney and or Intentional concealment of documents by an attorney constitute extrinsic fraud and allows a judgement to be set aside due to fraud upon the court, as such conduct by an attorney effectively precludes the opposing party from having his day in court. Because Fraud upon the court is an affront to the administration of justice. A litigant who has been defrauded need not establish prejudice in order to set aside a judgement. Petitioner asserts supra Checoing is homogenous to his scenario and this will be further elucidated upon in the subsequent paragraphs. Fraud on the court only requires a showing that one has acted with an intent to decieve or defraud the court. The petitioner shall predicate a conscious wrong doing and inequitable conduct in constructing the petitioners true billed indictments.

Furthermore there is also no statute of limitations on subject matter jurisdiction. See Means V Warden McCormick Correctional Inst. N.R. in F Supp 2d 2009 WL 483829 also Campbell V Warden of Broad River Correctional Inst N.R F Supp 2007 WL 279188. A PCR application filed after 1 year period. The action was dismissed as untimely in regards to all allegations except a challenge to subject matter jurisdiction.

The petitioner contests respondents statement regarding subject matter and the grand jury being without merit. Without presenting a meticulous in depth argument of her contentions, explaining why to the petitioners see Pruitt v State 310 S.C. 254, 423 S.E.2d 127 (1992) The petitioner will attempt to succinctly elucidate upon his arguments in the subsequent paragraphs.

① First to be noted is the jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the State, and is fundamental State v Heyward 561 S.E.2d 379 2002 citing Anderson v Anderson 382 S.E.2d 892 (1989) Subject matter jurisdiction may not be waived even with the consent of the parties, and may be raised at any time Brown v State 540 S.E.2d 846 (2001). The statutory provision at issue, which the petitioner is asserting is §14-9-210 and provides in pertinent part that "The county solicitor shall prepare and through the presiding judge of the court of general sessions submit to the grand jury while in attendance upon the court of general sessions Bills of indictments in all cases pending in the county court, in which the punishment may exceed a fine of one hundred dollars, or imprisonment for thirty days. When such cases have not been previously acted on by the grand jury. The grand jury shall act thereon, and shall report its action to the presiding judge of the court of general sessions and said judge shall direct the Clerk of the court of general sessions to report the same to the presiding judge of the county at it next ensuing term. The statutes terms are clear and unambiguous. This is a mandate which states its requirements and compliance with its provisions. Statutory prescriptions couched in language such as shall and must are mandatory in application and effect. SC Police Officers Retir Syst v City of Spartanburg 341 S.E.2d 239, Starcaes v S.C. Dep of Pub 535 S.E.2d 665, 667 2000. Albeit the fact of the matter is the evidence in exhibit Q predicates Horry county unlawfully impaneled its grand jury outside the jurisdiction of the court of general sessions. The terms of court are fixed for the fifteenth judicial circuit pursuant to §14-5-810.

② The respondent referenced State v Gentry 610 S.E.2d 494 as a defense, when the petitioners challenges are to the officers of the Court of Horry violations to the SC Constitution and statutes of this state as well as the U.S.'s. The petitioner will attempt to elaborate upon supra Gentry and State v Evans 611 S.E.2d 510 so that the State will no longer attempt to misinterpret these cases, or use them as buttress' for precluding subject matter jurisdiction. In supra Gentry which relies on § 17-19-90 refers to an objection to an Indictment for any defect apparent on the face therefore shall be taken by demurer, or on motion to quash such indictment before the jury shall be sworn and not afterwards. Recognizing supra Gentry our Supreme Court held in supra Evans that challenges to the legality and sufficiency of the process of a county grand jury also must be made before the jury renders a verdict in order to preserve

the error for direct appellate review, see §14-7-1140(2003) No irregularity in any writ of venire facias or in drawing, summoning, returning, or impaneling of the jurors is sufficient to set aside the verdict unless the party making the objection was injured by the irregularity or unless the objection is made before the returning of the verdict. The Evans court overruling several cases, further determined that an indictment which is deemed to be a nullity because it was issued by an illegal grand jury no longer implicate subject matter jurisdiction.

Yet in the petitioners case he asserts the position that a challenge by the State to either the illegal grand jury process, or the null indictment would be Immaterial. On the basis that no valid waiver can be entered, absolving the Court officials of Harry of their criminal conduct, and a null indictment is of no legal effect. State v Cohen 135C. 198, 201 If a proceeding shows upon their face a want of jurisdiction or fail to show that which was necessary to confer jurisdiction. The whole is a absolute nullity and it is of no consequence in what way the defect is brought to the view of the court. Held by Chief Justice McIver see also State v Dawkins 105 E 772 A contract as it is in violation of the provisions of a statute is a absolute nullity and is of no binding force on the parties Hardin v Trimmier 35E 46 (1887) Unlawful or illegal sentence is one imposed without or in excess of statutory authority Sunbear V US. 644 F.3d 700 (2011) and is by its very nature insufficient to support a conviction or sentence and protect against double jeopardy. It is a axiomatic rule of law that a indictment deemed to be a nullity is something that is legally void and of no legal effect citing Blacks Law Dict 8th edit 2004 see eg. Hardison v Glenn Hill 335 E 2d 921. Lack of jurisdiction shall be noticed by a court at any time Pan v US. CCA. 1168 F 2d 373 see also US v Solomon 216 F Supp 835. Dismissal for lack of subject matter jurisdiction can be asserted at any time SCRCiv P rule 12(h)(3). Petitioner humbly prays the Honorable Judge Seals doesn't condone this palpable defect of jurisdiction, irregular and void at first instance

(4) Furthermore as cited supra. Chewing v. Ford Motor co. which is analogous to Murray v Carrier 106 S Ct 2639, 2645 1986 the U.S. Supreme Court held that the existence of cause for procedural default for failure to comply with a state contemporaneous objection rule, must turn on whether the prisoner can show that some objective factor external to the defense impeded counsels efforts to comply with the state procedural rule. The court stated, without attempting a exhaustive catalog of such objective impediments to compliance with a procedural rule. We note that a showing that the legal or factual basis for a claim wasn't reasonably available to counsel see Reed v Ross 104 S Ct 2910, or that some interference by officials Brown v Allen 73 S Ct. 397 (1953) made compliance impractical, would constitute cause under this standard id. 106 U.S. at 2645.

The petitioner will now list the Court officials, whoms interference made compliance impracticle with

procedural rule. As well as the roles of the confederates, in their conspiracy to usurp the petitioners rights by commiting perjury and subornation of perjury, malfeasance, obstruction of justice, conspiracy against public policy, dereliction of duty as well as violations to their oaths of office. Also to be noted a plethora of violations to the SC. Constitution Article 1 §3, 11 the United States Constitution amendments 5, 14. The subsequent are all those that were necessary to utilize the illicit return of the true billed indictment. Which predicates fraud upon the court.

The first would be the circuit court administrative judge. Which was in office at the time relevant to the indictment On the basis of the petitioners belief, of the judges surmised actions of scheduling a unlawful grand jury outside the bounds of the court of general sessions. Those who hold a judicial position Know the laws and the codes of judicial conduct 2(A)

Second would be the true and chief conspirators, the solicitor and assistant solicitor. Whom, if they assumed their culpability, would exculpatate the remainder. Gregory Hamboree, which is now a part of the General Assembly at the State House. I only state his name, on the basis of it being listed on the indictment, which the petitioner conjects is outdated. The petitioner has substantial evidence based upon Emails to Ms. Pratt on the record, that Donna Elder was truly the head solicitor. The assistants would be Elizabeth V Tilley and Stephen Grooms. All of which, antithetical to performing their obligatory duties in compliance with the state laws, they violated Article 1 §11, Article V §22 SC. code ann §14-9-210, §17-19-10, §14-5-810 as well as violating their Oaths of Office by printing false information in the petitioners indictment. Therefore willfully commiting §16-9-10 A(2) perjury and subornation of perjury an offense against public justice, which is only a misdemeanor pursuant to B(2). Also in doing so they committed §16-17-410 conspiracy against public policy, conspiracy is a combination or agreement between two or more persons for the purpose of accomplishing a criminal or unlawful object or achieving by criminal or unlawful means an object that is neither criminal nor unlawful State v Buckman 555 S.E.2d 402 (2001), State v Hammitt 535 S.E.2d 459 (2000) State v Dasher 298 S.E.2d 215 citing 16 Am. Jur. 2d conspiracy §11 State v Oliver 267 S.E.2d 529 State v Ferguson 705 S.E. 221 S.C. 300 All of which cannot be excused, on the basis that a solicitor holds full Knowledge and understanding of the laws of this State, a requirement of a prosecutor. A prosecutor occupies a quasi judicial position and he/she must see that justice is done and that no conviction takes place, except in strict conformity with the law State v Quattlebaum 527 S.E.2d 105 (2000) State v Durden 212 S.E.2d 587 (1975) State v King 71 S.E.2d 793 (1952)

Third would be the grand jury foreman Martha Haw whom signed the true bill stamp, affixed to the indictment. Consequently commiting and assisting the antecedent. It is by her authority to swear witnesses whose name appear on the bill of indictment no witnesses shall be sworn except those who have been bound over or subpoenaed

in the manner provided by

The Clerk of Court, the petitioner grants immunity on the basis of her refusal to clock stamp and date the document merely filed it. As if she was cognizant of the documents illegality and wanted no part of it, implicitly alerting the petitioner to the crime, unbeknownst to her. Albeit the indictment containing the fabricated information was filed in the courts public records and passed to the presiding judge at the next term.

Fifth would be the presiding judge at the petitioners term of general sessions. Who allowed the indictment containing false information to be reported and published at his court. This Judge allowed the illegal indictment to enter the official court record unchallenged. Albeit a judge is cognizant that no grand jury convenes on this date.

Petitioner imputes failure to make timely objections to the illegal grand jury and void indictment to the County officials. Based upon their acts of perjury and criminal conspiracy. The U.S. Constitutional law requires the default to be imputed against the responsible party.

② Emphasis added, a circuit judge retains no authority on his own standing to conduct and oversee a grand jury proceeding outside the bounds of a lawfully convened court of general sessions. Under our judicial system the presiding judge in the circuit court loses jurisdiction with the adjournment of the term. State v Best 186 SE 2d 272 citing State v Thompson 115 SE 321. see also State v Rhinehart 430 SE 2d 536 (1993). Therefore there is no merit to the respondents contention that a judge on his own standing retains authority to impanel a grand jury after the close of court. Or as the respondent stated "merely changing the time for holding the court, didn't make the grand jury illegal." Pursuant to the subsequent mandated statutes and provisions it does §14-5-810 and 14-9-210. If there is no term of court there is no lawful judicial authority. Emphasis added here as well, a criminal defendant **has a constitutional** and **statutory right to have the indictment issued by a legally constituted** grand jury see eg State v Means Op. no 26105 SC. Supreme Court Filed February 6 2006 Evans v State 611 SE 2d 510 2005 State v Williams 210 SE 2d 298 1974 SC. Constitution Article 1 §11 Article V §22 and §14 9-210.

③ Keep note that §14-9-210 is not a local rule or statute but a general provision applicable to the courts in every county and as shown mandates the grand jury must be impaneled under the jurisdiction of the court of general sessions before a lawful return of a true bill indictment can take place. That stated 14 9-210 is clearly a jurisdictional statute and sets forth the only process allowed for lawful return of indictments. No local rule of court administrative order, policy or other procedure can take precedent over statutory law, which is always controlling see SC Constit. Article §§1, 4 State v Cottingham 77 SE 2d 897 1953 statutes override rules of court in conflict. State v Duncan 264 SE 2d 421 1980 Circuit rule promulgated by individual circuit was unconstitutional and void see also State v McIver 241 SE 2d 747

The petitioner has now alerted the Court of record of the landmark case law of supra Chewing v Ford Motor Co, Murray v Carrier. The petitioner asserts that the officers of Horry violated both Constitutions and a myriad of statutory law, utilized the presumption of correctness to effectuate the illicit usurpation of the petitioners rights, just as the Honorable Respondent wished to use it see Pringle v State 339 SE 2d 127 State v Griffin 285 SE 2d 634 State v Thompson 409 SE 2d 420. Their surreptitious malfeasance, shall constitute the conscious, inequitable, external factor sufficient to show cause for failure to make objections, substantiated with evidence of fact.

Concerning the Hon. Respondents contention concerning rule 60B. It is also without merit refer to §17-27-80 which states all rules and statutes applicable in civil proceeding are available to the parties. As well as 71.1a and the U.S. Supreme Court explaining. In addressing a case involving fraud on the court, that to be granted.

relief it must be filed under provisions of rule 60(b)(3) Fed R Civ. Proc homogenous to SCRCiv Proc In reference to that Motion, the respondent has now consentually defaulted. As well as the PCR arguments she failed to refute point for point.

Also to be noted in the antecedent argument concerning subject matter jurisdiction, was not the only one of relevance there were two others probable cause and the subsequent. They both were uncontested, so there is no need to be as meticulous in the assertion of the facts. Hon Judge Seals could you please refer to the sentencing sheet, peruse to the section that states the defendant waives presentment to the grand jury, there is a lack of defendants initials, it is not checked, signed or initialed by the petitioner. This is pertinent on the basis of the precedent caselaw Phillips v State 314 SE2d 313 the Supreme Court held that the defendants failure to sign a waiver of indictment invalidates a guilty plea a requisite of §17-23-130 and 140 also predicating a statutory violation. Unless a defendant waives a grand jury indictment and pleas guilty. Court lacks subject matter jurisdiction to convict and sentence him for that offense, when there is no indictment charging him with that offense at the time jury is sworn see also. State v Parker 371 SE2d 288 Hook v State 577 SE2d 211 Joseph v State 571 SE2d 280 and Summerall v State 294 SE2d 344 (1984)

Also please take note of State v Arthur 296 SC 499 374 SE2d 291 1988 the court held that a waiver of a constitutional and statutory right requires a showing on the record that a defendant made the waiver Knowingly and inteligently citing Patton v US 281 US 276 50 S Ct. 253 1930 as the land mark. This standard should be applied here. The basic United States Constitutional due process law dictates with authority that under no circumstances can a state commit criminal acts against its citizens in the name of judicial economy. I am very reticene concerning my next statement. I once contacted Patrick J Malley concerning this requesting a investigation, him being the Inspector General. He responded I will take no parts in this matter, a salient display of derilict of duty, I have the letter. This discerned me of how prodigious this must expand to employees of this state. This made me rethink contacting the US Inspector General. This was an tecedent of me gaining access to the court. I humbly pray your honor you grant me a PCR hearing, my immediate release or a in camera

Respectfully pertinaciously; Assiduously submitted

Damien Johnson

SUI JURIS

would entitle Applicant to a hearing on this matter. Overall, Applicant's responses wholly fail to demonstrate specific reasons, factual or legal, why the conditional order should not become final.

IT IS THEREFORE ORDERED that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for Post-Conviction Relief is hereby **denied and dismissed with prejudice.**

This Court notes Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this order to secure the appropriate appellate review. Applicant's attention is directed to Rules 203 and 243, SCACR, for appropriate procedures for appeal.

IT IS SO ORDERED THIS 28 **DAY OF** Oct **, 2015.**

THE HONORABLE WILLIAM H. SEALS JR.
Chief Judge for Administrative Purposes
Fifteenth Judicial Circuit

Chesterfield, South Carolina