

R. James Miller, Jr. #316047  
Manning Corr. Inst. W8 23A  
502 Beckman Drive  
Columbia, SC 29203

January 7, 2016

Daniel E. Shearouse, Clerk of Court  
The Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

**RECEIVED**

JAN 11 2016

S.C. SUPREME COURT

Re: Appellate case No. 2015-001730

Dear Mr. Shearouse,

Please find the enclosed "Rule 243(c) Explanation" and "Certificate of Service" for filing in the above captioned case. I have sent a letter to the Fairfield County Clerk of Court, Betty Jo Beckham, requesting that she provide you with the official (time/date stamped) copy of my Notice of Appeal, proof of service, and Final Order of Dismissal. Please let me know when you receive the information. I would like to have my Motion to Appoint Counsel (previously submitted) considered once you receive all the requested information and documents. Please let me know if there is anything else I need to do. Thank you for your time and assistance.

Respectfully,

*R. James Miller, Jr.*

THE SUPREME COURT OF SOUTH CAROLINA

R. James Miller, Jr. :

Appellate Case No. 2015-001730

v. :

Lower Court case No. 2015CP2000078

State :

Rule 243(c) explanation

Petitioner's PCR is neither successive or untimely under the statute of limitations. The PCR Court's analysis and reasoning was flawed, as well as its conclusion. Petitioner is able to demonstrate that Jurists of reason could disagree with the PCR court's resolution of his constitutional claims. The court's point of view is very different from how most people would see the situation and it would be difficult for a reasonable person to understand how the state court came to its decision. See *Jermyn v. Horn*, 266 F.3d 257, 312 (3rd Cir. 2001) (finding that defendant's counsel had been ineffective for failing to conduct adequate investigation and the state court's decision to the contrary was objectively unreasonable); See also *Rompilla v. Beard*, 545 U.S. 374, 389, 125 S.Ct. 2456, 2467 (2005); *Washington v. Hofbauer*, 228 F.3d 689, 707 (6th Cir. 2000).

The PCR court was unreasonable in not finding a

Violation of my rights. The court's decision "resulted in a decision that was contrary to, and involved an unreasonable application of, clearly established Federal Law."

See Williams v. Taylor, 529 U.S. 362, 406, 120 S.Ct. 1495, 1519-20 (2000); Randass v. Angelone, 530 U.S. 156, 165-66, 120 S.Ct. 2113, 2119-20 (2000); Lackyer v. Andrade, 538 U.S. 63, 73, 123 S.Ct. 1166, 1173 (2003).

Subject matter Jurisdiction may be raised at any time, see Brown v. State, 343 S.C. 342, 540 S.E. 2d 846 (2001); Butler v. King, 781 F.2d 486, 490 (5th Cir. 1986). The General sessions court did not have Jurisdiction and violated the Due Process Clause of the 5th and 14th Amendments.

See Sunal v. Large, 332 U.S. 174, 178-79, 67 S.Ct. 1588, 1591; Lowery v. Estelle, 696 F.2d 333, 336-38.

The PCR Court was objectively unreasonable in not finding that Constitutional errors had occurred. See Wiggins v. Smith, 539 U.S. 510, 528, 123 S.Ct. 2527, 2538 (2003) finding that a "clear factual error" in a state court's analysis "highlight[ed] the unreasonableness" of the court's decision. The PCR Court's decision would have been different if the court had properly considered all of the relevant facts and had they not ignored the evidence. See Mask v. McGinnis, 233 F.3d 132, 140 (2nd Cir. 2000). See also Taylor v. Maddox, 336 F.3d 992, 1000-01 (9th Cir. 2004).

The state erred when it denied me a full and fair opportunity to raise my Fourth Amendment claims. See Capellan v. Riley, 975 F.2d 67, 70-71 (2nd Cir. 1992). The state provided no corrective procedures at all to redress the Fourth Amendment violations. The PCR Court proved itself to be inadequate, unfair, and ineffective.

The state court also ignored legally relevant facts that it needed to consider in order to reach the correct result. The court's decision would have been different if the court had properly considered and applied all of the relevant facts. Additionally, the PCR Court's determinations of fact were unreasonable and the fact finding procedure the court used was inadequate because they made conclusions without looking at the evidence I presented.

See Torres v. Prunty, 223 F.3d 1103, 1109 (9th Cir. 2000); Mask v. McGinnis, 233 F.3d 132, 140 (2nd Cir. 2000); Caliendo v. Warden of Cal Men's Colony, 365 F.3d 691, 698 (9th Cir. 2004).

The PCR Court's determination of facts was unreasonable and not at all supported by the evidentiary record. See Hooks v. Ward, 184 F.3d 1206, 1231 (10th Cir. 1999).

Petitioner is able to demonstrate a sufficient probability that the court's failure to review his claims will result in a fundamental miscarriage of justice.

Petitioner's Application for Post-Conviction Relief

has been timely filed and within the statute of limitations (no statute of limitations on subject matter jurisdiction claims) and has been "Tolled" by numerous other filings: State habeas corpus, Federal habeas corpus, motions to certify question of Law, motion to vacate judgment, motion for relief from judgment pursuant to Rule 60(b), Motion for Writ of Error Coram Nobis, and numerous others (see The Supreme Court of South Carolina case No.'s 2014-0030, 2014-1029, 2014-1620, 2014-1740, 2014-2102, 2014-2310; U.S. Dist. Court 1:14-cv-00483-RBH and ...).

### Conclusion

This matter: (1) has been timely filed, (2) is not a subsequent application, (3) the issues raised could not have been raised in previous application, (4) has substantial merit, (5) raises Constitutional violations, and (6) should, in the interest of Justice, be heard.

Based on the foregoing, petitioner has established (by clear and convincing evidence) that his entire PCR hearing was full of Constitutional violations and deprivations that require this Court to grant relief.

See Neder v. United States, 527 U.S. 1, 7, 119 S.Ct. 1827, 1833 (1999) stating that there is a "limited class of fundamental Constitutional errors that... are so intrinsically harmful as to require automatic reversal..." My case was full of such errors.

Respectfully Submitted,

Dated: January 7, 2016

*R. Jim Miller*

THE SUPREME COURT OF SOUTH CAROLINA

R. James Miller, Jr. :

Appellate case No. 2015 - 001730

v. :

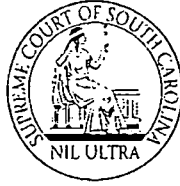
State :

CERTIFICATE OF SERVICE

I certify that a copy of the Appellant's Rule 243(c) Explanation was served on the Attorneys for the State by depositing a copy in the U.S. Mail, postage prepaid, on this 7<sup>th</sup> day of January 2016, addressed to:

S.C. Attorney General's office  
P.O. Box 11549  
Columbia, SC 29211

Respectfully Submitted,  
R. James Miller, Jr.



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA  
29211

1231 GERVAIS STREET  
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

[www.sccourts.org](http://www.sccourts.org)

December 22, 2015

Mr. Robert James Miller, Jr., #316047  
Manning Correctional Institution  
502 Beckham Drive  
Columbia SC 29203

Re: R. James Miller Jr. v. State  
Appellate Case No. 2015-001730  
Lower Court Case No. 2015CP2000078

Dear Mr. Miller:

This responds to your motion to appoint counsel dated December 17, 2015. This Court can find no record of receiving any notice of appeal from the final order of dismissal in this case.

If you have timely served a notice of appeal from the final order, then you will need to provide this Court with a copy of the notice of appeal, a copy of the orders under appeal, and a proof of service showing that the notice of appeal has been timely served on the opposing counsel. Further, if the post-conviction relief judge determined that this action was barred as being successive and/or untimely under the statute of limitations, you will also need to provide the explanation required by Rule 243(c) of the South Carolina Appellate Court Rules.<sup>1</sup> These documents and

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<sup>1</sup> Rule 243(c) states:

If the lower court has determined that the post-conviction relief action is barred as successive or being untimely under the statute of limitations, the petitioner must, at the time the notice of appeal is filed, provide an

explanation, if applicable, should be provided within fifteen (15) days of the date of this letter.

Until a notice of appeal is received by this Court and a determination is made under Rule 243(c), if applicable, no action will be taken on your motion to appoint counsel.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized initial 'C' followed by several loops and a long horizontal stroke extending to the right.

CLERK

cc: John Croom Colvin Hunter, Esquire

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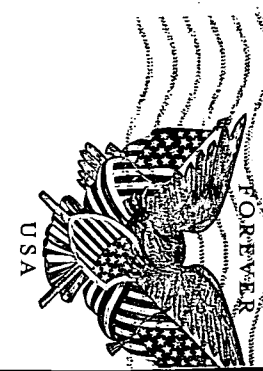
explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. If the petitioner fails to make a sufficient showing, the notice of appeal may be dismissed.

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K. James Miller, Jr. 31604  
Manning Cor. Inst. W8 83A  
502 Beckman Drive  
Columbia, SC 29203

COLUMBIA, SC 290

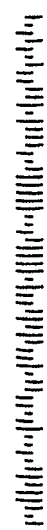
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The Supreme Court of South Carolina  
Daniel E. Shearouse, Clerk of Court  
P.O. Box 11336  
Columbia, SC 29211

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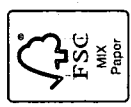
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