STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2015-002214

QUINTON LINEN, 238553

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

Did the lower court err in denying Petitioner's Application for Post-Conviction Relief where the records before the Court demonstrated that Petitioner's original PCR action addressing his 1988 judgment was improperly dismissed in an invalid order issued in connection with a separate PCR case involving different charges, a separate General Sessions proceeding and a different defense attorney?

II.

Did the lower court err in denying Petitioner's Application for Post-Conviction Relief where the records before the Court demonstrated that Petitioner's original PCR action addressing his 1988 judgment was improperly dismissed without notice to Petitioner and without the opportunity to respond required by statute?

STATEMENT OF THE CASE

Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. He was indicted at the January, 1988 term of the Charleston County Grand Jury for armed robbery (1987-GS-10-3362). Russell Brown, Esquire represented Petitioner in the Court of General Sessions. On January 29, 1988, Petitioner appeared before the Honorable John Hamilton Smith and entered a plea of guilty as indicted. He was sentenced by Judge Smith to a twelve (12) year term of imprisonment. Petitioner did not pursue a direct appeal from this judgment and sentence. After completing his sentence, he was released from SCDC custody.

Petitioner filed his initial PCR Application, docketed at 1997-CP-10-2086, on April 2, 1997, after he was indicted at the February 1997 term of the Charleston County Grand Jury for armed robbery (1997-GS-10-0926) and was served with Notice of the State's Intent to Seek Life without Parole pursuant to S. C. Code Ann. § 17-25-45 (2014). Days later, on April 8, 1997, Petitioner proceeded to trial and was found guilty as indicted. The Honorable Charles W. Whetstone, Jr., sentenced Petitioner to life imprisonment without parole (LWOP) based upon his receipt of a second "strike" for a most serious offense. In his first PCR Application, Petitioner alleged the following grounds for relief:

1. Ineffective assistance of counsel:

    i. "Failure to investigate the offense: attorney only met with me 1 time 5-7 days before court. I told him where I was when crime happened, but he never investigated. I had only met with my lawyer one time before court for no more than 20 minutes. Mr. Brown never asked for name or witnesses."

2. Guilty plea – waiver of rights not knowingly and voluntarily made:

    i. "Mr. Brown told me if I did not plead guilty I would get the maximum sentence of 25 years. I felt intimated and like I did not

have a choice. I did what Mr. Brown told me to do, not what I felt was right."

Petitioner's second PCR Application, docketed at 1998-CP-10-5031, was filed on December 31, 1998, and was his *first* PCR addressing his 1997 conviction. At the time of this filing, there had been no action taken on his previously filed application docketed at 1997-CP-10-2086. In his PCR Application addressing his April, 1997 jury trial, Petitioner alleged the following grounds for relief: Ineffective assistance of counsel;

1. "The manner in which the State has proscribed that my sentence be carried out is unconstitutional; "and

2. After discovered evidence, constitutional issues-novel issues.

An evidentiary hearing was held on that application on May 22, 2000, at the Charleston County Courthouse. Juan Tolley, Esquire, represented Petitioner. By Order filed October 12, 2000, the Honorable H. Dean Hall, presiding circuit judge, issued a ruling denying and dismissing *both* applications with prejudice. That order stated:

> This Court finds Petitioner's 1997 PCR Application (97-CP-10-2086), collaterally attacking his 1988 armed robbery conviction (87-GS-10-3362) is barred by the statute of limitations. S.C. Code Ann. § 17-27-45(a). Petitioner was convicted on January 28, 1988; however he filed his application on April 2, 1997, well after the July 1, 1996 statute of limitations passed. *See, Peloquin v. State*, 321 S.C 468 469 S.E.2d 606 (1996). Accordingly, the application is denied.

Petitioner filed a *pro se* Motion to Alter or Amend Judgment, pursuant to Rule 59(e), SCRCP, on November 7, 2000. Petitioner appealed the denial of his PCR Application docketed at 1998-CP-10-5031. He was represented by the Appellate Division of the South Carolina Office of Indigent Defense, in the person of Eleanor Duffy Cleary, then an Assistant Appellate Defender with that agency. Appellate Defender Cleary filed a *Johnson*[1], no merit, certiorari petition on

[1] *Johnson v. State,* 294 S.C. 310, 364 S.E.2d 201 (1988).

behalf of Petitioner. By Order filed July 30, 2003, the Honorable Daniel F. Pieper denied the Rule 59(e) Motion filed by Petitioner on November 7, 2000. The Supreme Court of South Carolina denied Petitioner's Petition for Writ of Certiorari on his PCR appeal on the action docketed 1998-CP-10-5031 on May 13, 2004. The Remittitur was issued on June 1, 2004.

Petitioner filed a third PCR Application (2001-CP-10-1999) on March 6, 2001, challenging both his 1988 and 1997 convictions and alleging the following ground for relief:

1. "Denied unlawful PCR procedures and direct appeal."

2. "Both my convictions 97-GS-10-0926 and 87-GS-10-3362 were illegally imposed by an unlawful form of S. C. Bar Court out of legal lawful jurisdiction of S. C. Circuit Court."

3. "Denied counsel by criminal dysfunctional counsel aiding solicitor to illegally fraud client with a frauded [sic] indictment at no time has any counsel been honest and lawfully working for my best interest."

4. "Racially targeted and discriminated against in illegal prosecution and denial of legal counsel in a lawful manner in the initial prosecutions, direct appeal, PCR's and etc."

Respondent made its Return and Motion to Dismiss on June 14, 2001. On July 5, 2001, Petitioner submitted a *pro se* Memorandum in Opposition to Respondent's Motion to Dismiss. Ellen Howard, Esquire represented Petitioner. By Order filed January 17, 2002, the Honorable R. Markley Dennis, Jr., dismissed this application *with prejudice* after finding Petitioner freely, voluntarily, and intelligently withdrew his application.

Petitioner filed his current application on March 31, 2014, solely challenging his 1988 conviction and alleging the following grounds for relief:

1. Applicant was denied the opportunity for his one full collateral review of the judgments and sentences addressed in his first PCR which addressed the judgment and plea for armed robbery used to enhance his sentence at his subsequent jury trial to Life Without Parole. He has not had his "one full bite at the apple" for collateral review of his first PCR.

2. Applicant was without the benefit of Counsel to assist him in raising the appropriate defenses to the Summary Dismissal of his first PCR action docketed at 97-CP-10-2086. The Petitioner now respectfully argues that the Petitioner's first PCR action was dismissed without him ever being fully heard on the reasons that action should have been found to be timely. The Petitioner was without fault in this matter inasmuch as he never got the chance to develop this argument and have it heard in the context of his first PCR action. For that reason, he should have his first PCR action reopened and should be afforded the opportunity, this time with adequate legal counsel, to demonstrate why his initial PCR was timely. In the alternative, at minimum, he should be granted a belated PCR appeal from the Order of Dismissal issued in this matter on October 12, 2000.

Respondent filed its Return and Motion to Dismiss on February 17, 2015. An evidentiary hearing was convened before this Court on Respondent's Motion to Dismiss on April 23, 2015, at the Charleston County Courthouse. Petitioner was present at that proceeding and was represented by Tara Dawn Shurling, of the Richland County Bar. Respondent was represented by then Assistant Attorney General, Elizabeth H. Neyle. An Order of Dismissal was subsequently entered on September 22, 2015 and was received by Counsel for Petitioner on September 24, 2015. Petitioner served and filed timely Notice of Appeal from the Order of Dismissal on October 23, 2015. This appeal follows.

EVIDENCE BEFORE THE LOWER COURT

The Index to the Appendix submitted along with this petition sets forth in detail the documentation before the lower court in this matter, in addition to the testimony heard during the PCR hearing. In an effort to create a convenient reference to the unusually complex procedural timeline in this case, Petitioner has included much more detail in that Index than is typical in a PCR appeal.

ARGUMENT

Standard of Review

This Application for Post-Conviction Relief generally raises numerous specific allegations of ineffective assistance of counsel. The standard of review in a Post-Conviction Relief appeal is whether "any evidence of probative value" exists to support the Post-Conviction Relief court's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The burden of proof is on the Petitioner in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rule 71.1(e), SCRCP. In evaluating an Application for Post-Conviction Relief, the moving party must demonstrate that trial counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial. Strickland v. Washington, 466 U.S. 668 (1984). In other words, the Petitioner must show that but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. Id.; Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. Ard v. Catoe, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007).

On the one hand, where trial counsel articulates a valid reason for employing certain trial strategies, such conduct should not be deemed ineffective assistance of trial counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). On the other hand, counsel may not explain away errors and omissions

which acted to prejudice his client's ability to receive a fair trial simply by labeling them matters of trial strategy or tactics. In the case of Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002), the Supreme Court of South Carolina found that

> Counsel must articulate a **valid** reason for employing a certain strategy to avoid a finding of ineffectiveness. Where counsel articulates a strategy, it is measured against an objective standard of reasonableness.

(Emphasis in original) (internal citations omitted).

Discussion

I.

Did the lower court err in denying Petitioner's Application for Post-Conviction Relief where the records before the Court demonstrated that Petitioner's original PCR action addressing his 1988 judgment was improperly dismissed in an invalid order issued in connection with a separate PCR case involving different charges, a separate General Sessions proceeding and a different defense attorney?

II.

Did the lower court err in denying Petitioner's Application for Post-Conviction Relief where the records before the Court demonstrated that Petitioner's original PCR action addressing his 1988 judgment was improperly dismissed without notice to Petitioner and without the opportunity to respond required by statute?

S.C. Code Ann. §17-27-70(c) authorizes this Court to "grant a motion by either party for summary disposition of an application when it appears from the pleadings...that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." S.C. Code Ann. §17-27-70(b), however expressly calls for an applicant for PCR to be put on notice of the Court's intention to dismiss on the pleadings and to be given the ***"opportunity to reply to the proposed dismissal."*** Petitioner was afforded the opportunity to be heard on Respondent's Motion for Dismissal ***on his most recent application for collateral review***. What

is clear upon close inspection of the history of this case is that Petitioner's original PCR action on the judgment addressed herein was dismissed without a hearing and without any opportunity to be heard on the question of whether there existed facts, unique to his case, which justified the hearing of his application on its merits pursuant to S.C. Code Ann. §17-27-45 (B) and/or (C). For the reasons discussed below, Petitioner urges this Honorable Court to find that this most recent application brought to light grounds which had previously escaped fair review by our courts through no fault of his own and therefore, should be heard. Petitioner's last application raised "a ground for relief for which sufficient reason was not asserted or was inadequately raised in the original....application" filed by Petitioner and which was dismissed without Petitioner having been given the opportunity to more fully develop and explain potential justification for his failure to file within the one year statute of limitations set forth in §17-27-45 (A). *See* also, S.C. Code Ann. §17-27-90.

As noted above, Petitioner's **first PCR action**, Docketed at **97-CP-10-2086** addressed his 1988 judgment and sentence entered pursuant to a guilty plea to armed robbery. That PCR Application was filed shortly after the State announced its intention to use the Petitioner's prior judgment as the predicate most serious offense for a life without parole sentence pursuant to §17-25-45 (2000) on Indictment No. 97-GS-10-0926 for armed robbery. According to the records of the Charleston County Clerk of Court, this Application for PCR was denied by Order of Dismissal filed October 12, 2000. *See, discussion infra.* At the evidentiary hearing held in this matter, Petitioner asserted that there is no clear record of any Order of Dismissal on 97-CP-10-2086 having been appealed to the Supreme Court nor is it apparent from the public index whether the Petitioner had a lawyer appointed to him in that PCR action.

The records before this Court establish that Petitioner's ***second*** PCR action, docketed at

98-CP-10-5031, was filed on December 31, 1998 and addressed the Petitioner's jury trial at which he was convicted of a second armed robbery and was sentenced to Life without Parole based upon his previous plea addressed in his first PCR action. There is no record of any action having been taken by the Court of Common Pleases on Petitioner's first PCR action docketed at 97-CP-10-2086 prior to the filing of Petitioner's second PCR filed on a separate charge which was disposed of at a separate judicial proceeding; a jury trial held on April 8, 1997. The records before this Court verify that the judge who presided over Petitioner's second PCR, the Honorable H. Dean Hall, issued an Order of Dismissal in that case which was filed on October 12, 2000. For reasons not clear from the Order, Judge Hall dismissed the Petitioner's first PCR Application as untimely in his order ruling on the PCR action docketed at 1998-CP-10-5031.

The Petitioner filed a *pro se* Motion to Alter or Amend pursuant to Rule 59(e) SCRCP on November 7, 2000. That motion was very clearly captioned as a Motion to Alter or Amend Judgment on **1998-CP-10-5031.** While Petitioner apparently had a hearing on his *pro se* 59(e) motion filed on his second PCR after it was denied, no transcript of that hearing was included in the Appendix to the PCR appeal from the Order of Dismissal issued following the evidentiary hearing on the application docketed at **98-CP-10-5031.** Neither did that Appendix contain a copy of Judge Pieper's Order denying that 59(e) motion.

During the evidentiary hearing held on Petitioner's most recent PCR filing, Petitioner's current PCR Counsel proffered that her research of all available records did not reveal any documentation of the date that document was date stamped for mailing from the South Carolina Department of Corrections nor do they reflect the date the Petitioner was actually served with the Order of Dismissal.

The Petitioner filed a *third* PCR action on March 16, 2001 which was docketed at 01-CP-

10-999. The records before this Court reveal that this ***third*** PCR Application was apparently withdrawn on Wednesday, January 16, 2002. It appears from the records of the Clerk of Court that Attorney Howard was appointed in connection with Petitioner's ***third*** PCR filing, and that a subsequent hearing held before the Honorable R. Markley Dennis, was likewise on that application. The records before this Court demonstrate that during that hearing before Judge Dennis, the parties *attempted* to address the Petitioner's *pro se* Rule 59(e) motion on his previous PCR docketed at 98-CP-10-5031, and were instructed that the matter had to be addressed to the attention of the current Chief Administrative Judge pursuant to Rule 63, SCRCP, inasmuch as Judge Hall, who had issued the Order of Dismissal on that Application, had retired.

A hearing was subsequently held before the Honorable Danny Pieper, then Chief Administrative Judge for the Ninth Judicial Circuit, on the Petitioner's Rule 59 (e) Motion on 98-CP-10-5031. Judge Pieper issued an Order denying the Petitioner's Rule 59(e) motion on 98-CP-10-5031. That order was filed on July 30, 2003. Neither the *pro se* 59 (e) Motion, nor the Order of Judge Pieper, address the propriety of Judge Hall's dismissal of the PCR action docketed at **97-CP-10-2086** in his order ruling on a separate civil action. To be clear, the PCR docketed at **98-CP-10-5031** addressed allegations arising from a jury trial on *a completely different charge* than that addressed in Petitioner's earlier PCR docketed at 97-CP-10-2086. The judgment at issue in **97-CP-10-2086** was entered pursuant to a plea of guilty. The judgment addressed in Petitioner's ***second*** PCR docketed at **98-CP-10-5031,** was entered at a jury trial before a different judge at which Petitioner was represented by a different defense lawyer.

The Petitioner filed an appeal from the Order of Dismissal issued on the PCR action **docketed at 98-CP-10-5031.** Certiorari was denied following the submission of a *Johnson* Petition by Eleanor Duffy Cleary, then counsel with the Office of Appellate Defense. Certiorari

was subsequently denied and appellate counsel was relieved by orders of the Supreme Court of South Carolina dated May 13, 2004. The propriety of the ruling of Judge Hall, dismissing the PCR on the guilty plea case in the Order of Dismissal on the separate PCR addressing Petitioner's jury trial, *was not* addressed in the appeal to the Supreme Court of South Carolina. The *Johnson* Petition filed by Appellate Defense did not raise this issue and none of the documents pertaining to the action docketed at **97-CP-10-2086** were included in the Appendix to the PCR appeal on 98-CP-10-5031. The only document in that Appendix pertaining to **97-CP-10-2086 was** the Order of Dismissal on **98-CP-10-5031,** which was in the Appendix, and has *both* **97-CP-10-2086** and **98-CP-10-5031,** listed in the caption to the order and contains what purports to be a ruling on this unrelated PCR action on page 5, Section G, of that Order. Petitioner therefore argues that he never received an appeal from the denial of his first PCR action docketed at 97-CP-10-2086 by Judge Hall. This is not an appeal where issues were raised relating to some, but not all, of the judgments entered in the same judicial proceeding. Here, the circuit court had actually ruled on two separate cases in one order. Therefore, Petitioner most respectfully submits that a *Johnson* petition on an issue arising from one of the two separate judicial proceedings involved, did not satisfy the requirement that Petitioner have the right to appeal the order of the court as it pertained to the other case. Although the Petitioner, acting *pro se*, did not address the propriety of Judge Hall's actions in his *pro se* 59(e) Motion, the ruling in question was included in the Order of Dismissal and therefore was preserved for appeal. Petitioner asserts that if all the necessary documents from his first PCR, docketed at 97-CP-10-2086, been in the Appendix to the appeal from Judge Hall's ruling on **98-CP-10-5031,** this Honorable Court would likely have addressed this issue in its review pursuant to the *Johnson* filing in that case.

Petitioner alleges that he was denied the opportunity for his one full collateral review of the judgment addressed in his ***first*** PCR which was ultimately used to enhance his sentence at his subsequent jury trial to life without parole. He has not had ***his "one full bite at the apple"*** for collateral review of his 1988 judgment. It is Petitioner's position that the ruling on his ***first*** PCR action, addressing his 1988 guilty plea, is not valid inasmuch as it was issued in the context of an order ruling on a completely different civil action; his ***second*** PCR addressing a different judgment on an unrelated crime which was imposed at a separate judicial proceeding at which he was represented by a different lawyer. He further alleges he was denied the opportunity to have that ruling subjected to appellate review where the Appendix submitted in connection with the *Johnson* PCR appeal perfected from the Order issued on his ***second*** PCR Application did not include the documents relevant to that earlier PCR.

There is no evidence Petitioner had an attorney appointed to represent him in connection with his *first* PCR application. As argued by Petitioner, not only was the ruling by Judge Hall procedurally flawed, it was issued without Petitioner having had the opportunity to respond, with the benefit of counsel, to assertions that the filing was not timely pursuant to S.C. Code Ann. §17-27-45 (A). Ordinarily, when the State asserts an Application for PCR is not timely filed, it will seek a Conditional Order of Dismissal from the Court. Such orders typically give the filing party twenty (20) days to explain why his application should not be dismissed as untimely. There was no evidence before the lower court that a Conditional Order of Dismissal was ever filed in this case. There was, in fact, no evidence before the lower court that Petitioner was ever put on notice of the State's position that his first application was not timely. There is no record confirming the State ever filed a Return and Motion to Dismiss on the Application docketed at **97-CP-10-2086**. Therefore, not only did Petitioner not receive the benefit of counsel

to assist him in that PCR action, he was not put on notice of State's position that his filing was untimely by proper service of a Return and Motion to Dismiss. Neither was Petitioner given the opportunity to respond to a Conditional Order of Dismissal issued by the Court of Common Pleas. The Appendix filed in connection with the appeal from the Order of Dismissal on Petitioner's *second* PCR filed following his jury trial, contained a transcript of the evidentiary hearing held on that application. *See,* **App. pp. 266 – 306**. The cover of that transcript contains the docket number for this second PCR only; **98-CP-10-5031. App. p. 266.** That transcript documents that although the fact that Petitioner had filed a PCR on his earlier guilty plea is mentioned during that proceeding, there was no discussion or testimony concerning the status of that filing at the time of this hearing. Likewise, that transcript does not reflect any testimony or argument concerning whether that application was timely filed due to some factor that might have qualified Petitioner's 1998 plea for review at the time of the filing of his first PCR pursuant to S.C. Code §17-27-45 (B) or (C).

At the hearing on Petitioner's PCR on his 1997 jury trial, arguments were heard concerning Petitioner's Sixth Amendment claims against his lawyer *at that trial.* Judge Hall denied that application from the bench. **App. pp. 304-305.** Following that hearing held on May 22, 2000, Judge Hall filed an Order of Dismissal, signed on October 12, 2000, which without explanation ruled not only on the case properly before him, but on Petitioner's previous PCR filing in an unrelated case as well. **App. p. 307-313, Section F.** Respondent asserts that Petitioner's two PCR actions were "merged" and thus, were both properly ruled upon by Judge Hall. There was nothing in the records before the lower court to support that assertion, nor is there any basis for an argument that S.C. Code §17-27-10, et seq., permits the merger of two PCR cases arising from unrelated cases. Petitioner asserts that Judge Hall simply did not have

jurisdiction to rule on the PCR action docketed at **97-CP-10-2086.** The matter was not before him and had not been reviewed by him.

The record below establishes that when the State filed its Notice of Intent to Seek a Life Sentence Without Parole against the Petitioner he had received no prior notice that the State was going to argue his 1988 judgment qualified as a strike. The Petitioner's trial record indicates that Petitioner's PCR on the 1988 judgment the State sought to use as his first strike was pending at the time of his sentencing from his 1997 jury trial. The record from Petitioner's jury trial reveals that his was the first case in Charleston County where the State was seeking a life without parole sentence based upon §17-25-45; the South Carolina Strike Law. The case law of this state reflects that the question concerning what could qualify as a "strike" was far less resolved in 1997 than it is today.

During the hearing presided over by Judge Hall; there was no opportunity for Petitioner to be heard concerning the timeliness of his first application. **App.pp. 266 – 305**. As noted above, the records of the Supreme Court of South Carolina do not reflect that the portion of the Order of Dismissal on the PCR action docketed at **98-CP-10-5031 which purports to rule on the Petitioner's separate PCR action docketed at 97-CP-10-2086** was appealed to this Honorable Court either separately, or, as part of the PCR appeal perfected on **98-CP-10-5031.** The *Johnson* Petition filed by Appellate Defense clearly did not address this crucial issue.

To say the procedural history of this Petitioner's case is a mess would be an understatement. Petitioner argues that his first PCR action was dismissed without him having been put on notice of the State's position that it was not timely and without him being given the opportunity to be heard, with the benefit of counsel, concerning the reasons that action should have been allowed to go forward. Petitioner submits he was without fault in this matter

inasmuch as he never got the chance to develop his arguments against Summary Dismissal and have them heard in the context of his first PCR action. For that reason, he asked the Court of Common Pleas to deny Respondent's Motion for Summary Dismissal and order that his first PCR action reopened. He sought the opportunity, this time with adequate legal counsel, to demonstrate why his initial PCR on his 1988 judgment was timely. In the alternative, he asked that he be granted a belated PCR appeal from the portion of the Order of Dismissal issued on October 12, 2000 which dealt with his *first* PCR action on his 1988 judgment.

On the very narrow and most unusual facts of this case, taking into account the life without parole sentence he is serving, Petitioner asks that this Honorable Court find that the relief requested below was necessary and appropriate and that Respondent's Motion for Summary Dismissal should have been denied. Petitioner respectfully submits that the lower court erred in summarily dismissing the current application on the ground of *laches*. The record demonstrates that Petitioner attempted to obtain collateral review of his 1988 judgment just as soon as he was put on notice that the State intended to use that judgment to enhance his penalty in his 1997 trial to life without parole. The Court never issued a Conditional Order of Dismissal on Petitioner's first PCR. Notwithstanding these facts, Petitioner was denied the opportunity to be heard due to delay that would never have taken place if Respondent, and the lower court, had handled this case properly at the time the *first* PCR application on the 1988 judgment was filed.

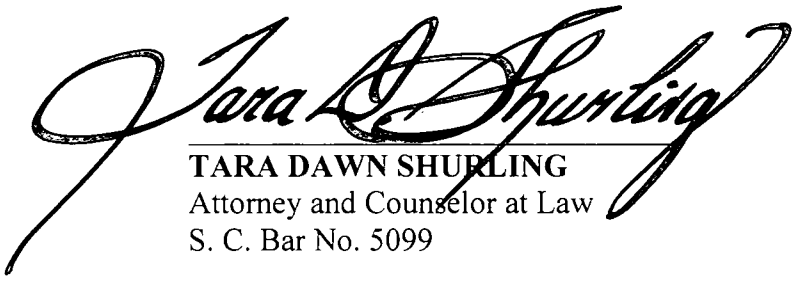
Petitioner seeks this Court's finding that the ruling previously issued on Petitioner's original PCR Application docketed at **97-CP-10-2086,** issued in the Order of Dismissal on the Application docketed at **98-CP-10-5031**, was not valid. Petitioner asks that this Court order that his PCR action docketed at **97-CP-10-2086** be reopened and that he be granted a *de novo* hearing on the timeliness of his first PCR action docketed at **97-CP-10-2086**. Alternatively,

Petitioner argues that even if this Court finds that the Order of Judge Hall ruling in two separate PCR actions was proper, **the record verifies that** Petitioner never had the opportunity for a proper PCR appeal from the portion of the Order in the PCR docketed at **98-CP-10-5031** which purported to rule on the action docketed at **97-CP-10-2086** as well. For that reason, Petitioner alternatively seeks a belated appeal from that portion of that Order. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

CONCLUSION

For the reasons stated herein, Petitioner asks this Honorable Court to grant the writ, dispense with further briefing and grant a hearing on the timeliness of the his application docketed at **97-CP-10-2086.** Alternatively, he would ask to be allowed full briefing on the issues summarized herein.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

This 3rd day of June, 2016.

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2015-002214

QUINTIN LINEN, 238553,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Petition for Writ of Certiorari and Appendix in the above-entitled case has been served upon opposing counsel this the 3rd day of June, 2016, by mailing one (1) copy in a stamped envelope properly addressed to:

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Columbia, SC 29211

Tara D. Shurling

TARA DAWN SHURLING
Attorney and Counselor at Law
S. C. Bar No. 5099

ATTORNEY FOR PETITIONER.

SWORN TO BEFORE me this 3rd day of June, 2016.

Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24