

Gregory Q. Gathers, #161538
Perry Correctional Inst.
430 Oaklawn Rd. Q2 B214
Pelzer, S.C. 29660

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June __, 2016

JUN 08 2016

Hon. Daniel E. Shearouse
Clerk, Supreme Court, S.C.
1231 Gervais Street
Columbia, S.C. 29201

S.C. SUPREME COURT


Honorable Shearouse:

I respectfully request that the Appeal of my PCR be put into abatement until I can resolve the issues with the lower courts for reconsideration of a new PCR hearing.

I have enclosed a copy of the motion of reconsideration, and a copy of the P.C.R.; Notice of Appeal.

Thank you in advance for your invaluable time in this matter.

Sincerely,


Gregory Q. Gathers
As Addressed Above

cc: GQG

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P.C.I. MAILROOM

State of South Carolina)
)
 County of Charleston)
)
 Gregory Q. Gathers,)
 Applicant,)
)
 -vs-)
)
 State of South Carolina,)
 Respondent.)

Court of Common Pleas
 C/A No.:2010-GS-10-6287
 RECONSIDERATION OF NEW
 P.C.R. HEARING

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The Applicant, Gregory Q. Gathers, #161538, in the above entitled case, respectfully request that the Honorable **S.O. SUPREME COURT** Reconsider a New PCR Hearing for the following reasons.

Applicant Gregory Q. Gathers, who was represented by Attorney Christopher Murphy, went before the Honorable Judge Dedra Jefferson, on December 14, 2015, for a PCR hearing in which all issues were denied. This order of request for a new PCR hearing motion follows:

- (1) Applicant was not allowed to present any issues, or show errors or prejudices on witness stand.
- (2) Applicant believes attorney waiver was constitutionally defective.

I

Applicant believes he was deprived of a fair hearing and Due Process of Law.

In Wilson v. State, 559 S.E.2d 581, the applicant's allegations for PCR is premised on fundamental and statutory rights. The P.C.R. Court must assume facts presented by applicant are true and view those facts in the light most favorable to the applicant.

P.C.R. attorney's failure to allow applicant testimony on witness stand in his PCR hearing denied him a "full bite of the apple". The fundamental defect alleged are standard that requires establishment of a complete miscarriage of justice and an omission inconsistent with rudimentary demands of a fair PCR hearing.

It would be denial of Due Process not to give the applicant reconsideration for a new PCR hearing motion.

II

Applicant believe's waiver was constitutionally defective.

In Sanders v. State, 773 S.E.2d 580, although a defendant may waive his right to collateral review, is nevertheless still entitled to challenge whether the advice he received from his attorney in agreeing to the waiver was constitutionally defective by due process of the law. Right to effective assistance of counsel is recognized not for it's own sake, but because of the effect it has on the ability of the accused to receive a fair trial.

In Ruddy vs. State, 528 S.E.2d 413, 421. A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and may be accomplished by a colloquy the Court and defendant's counsel, or both. In Moore v. State, 732 S.E.2d 871, for the purpose of the waiver provision of the post conviction procedure act, the question whether there were special circumstances excusing a failure to raise issues in a proceeding becomes pertinent, only when there was an intelligent and knowing failure of the applicant to raise the issue.

Where the record affirmatively shows that there was not an intelligent and knowing failure to raise an issue, there is nothing to excuse and the presentation of special circumstance has no relevance.

CONCLUSION


An Attorney has a duty to consult with the applicant on matters of the prosecution. Counsel should also have advised applicant of post trial procedures that might be pursued before or concurrent with any appeals. Counsel should have done what was needed to inform and advise defendant to make the applicant's ultimate choice a meaningful one. Counsel's evaluation of the case must be communicated in a comprehensive manner, before relinquishing responsibility for the matter.

Applicant's claim from denial of post conviction relief where post conviction court dismissed movant's ineffective assistance of counsel without making finding of facts on specific allegations raised violating statute and precluding appellant review. Code (1976) §17-27-80 USCA 6, S.C. Ann. §17-27-80 (1976).

This requirement was not met denying Applicant Due Process of Law and Ineffective Assistance of Counsel.

WHEREFORE based on the foregoing, Applicant respectfully request this Court to Reconsider him for a New PCR hearing.

Respectfully Submitted,


Gregory Q. Gathers

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Gregory D. Bathers #161538

Perry Correctional Q2-B-214

430 Oakman Road

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PO 1, MAIL ROOM

The Honorable Daniel E. Sherouse
Clerk of South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

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