RUSSELL L. DAVID sr.#240689
LEE, CORR: INST: ~~PAU B-1252-B~~ F5-C 120
990 WISACKY HIGHWAY
BISHOPVILLE, S.C. 29010-1213

June 8, 2016.

RECEIVED
JUN 10 2016
S.C. SUPREME COURT

THE HONORABLE BRENDA F. SHEALY
OR
DANIEL E. SHEAROUSE
CHIEF DEPUTY and CLERK OF COURT
OF THE SUPREME COURT OF SOUTH CAROLINA
P.O. BOX 11330
COLUMBIA, S.C. 29211-11330

RE: 2014-CP-30-0342 NOTICE OF APPEAL

DEAR MS. SHEAROUSE/MS.SHEALY,

ENCLOSED FOR FILING IS A NOTICE OF APPEAL IN THE ABOVE CASE, ALSO ENCLOSED ARE THE FOLLWING :

(1)PROOF OF SERCICE OF THE NOTICE OF APPEALON THE CLERK OF COURT OF LAURENS COUNTY FOR FILING AND SENDING TO RESPONDENT[s].

(2) A Copy Of The Order[s][judgment] WHICHIS [are] to be challengedon Appeal.

(3)applicant is unable to pay the fees and costs of the proceedings and wish to proceed in forma pauperis as in his P.C.R. APPLICATION.

[(4) THIS APPEAL IS BEING FILED WITH THE SUPREME COURT BECAUSE...(see RULE 203(d)for when an appeal can be filed with the Supreme court).]

SINCERELY,

Russell L. David sr.

RUSSELL , DAVID sr.

PRO SE

IN THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT OF APPEALS

RECEIVED

JUN 10 2016

S.C. SUPREME COURT

APPEAL FROM THE LAURENS COUNTY COURT OF COMMON PLEAS IN THE EIGHTH CIRCUIT

THE HONORABLE: DONALD B. HOCKER Presided

NOTICE OF APPEAL

RUSSELL LEON DAVID SR: . . . . . APPLICANT

V.

THE State of South Carolina . . . . . RESPONDENT

CASE No: 2014-CP-30-0342

Russell L Davids Sr.

RUSSELL LEON DAVIDSR.
#240689 LEE Corr. Inst. F4-B1252
990 WISACKY Highway
Bishopville SC 29010
PRO SE.

IN THE STATE OF SOUTHCAROLINA
IN THE SUPREME COURT
OF SOUTH CAROLINA COURT OF APPEALS

RECEIVED
JUN 10 2016
S.C. SUPREME COURT

CASE NO: 2014-CP-30-0342
APPEAL FROM LAURENS COUNTY
IN THE COURT OF COMMON PLEAS
HONORABLE ~~FRANK R. ADDY, Jr.~~ EIGTH Judicial circuit
DONALD B, HOCKER.

Russell LEON DAVID SR. . . . . Appellant.

V.

The State of South Carolina . . . . . Respondent,

PROOF of SERVICE

I CERTIFY THAT I HAVE SERVED The NOTICE OF Appeal ON The Assistant A.G. James R. Johnson by Depositing a Copy of it in The U.S. Mail Postage PRepaid ON June 8, 2016. Addressed to His Office. and Find the ORiginal For Filing in YOUR OFFice and Sending to the Court of Appeals

Thank you For your Help in this matter

Singerely
Russell Leon David sr.

June 8, 2016.

Russell LEON DAVID sr. #240689
F4-B 1256 Lee, Corr. INST.
990 Wisacky H.W.Y.
Bishopville S.C.
29010-1115

CC: RLD.
PRO Se

RECEIVED
JUN 10 2016
S.C. SUPREME COURT

IN THE STATE OF South Carolina

IN THE SUPREME Court of APPeals

FROM LAURENS County Court OF COMMON PLEAS

EIGHTH JUDICAL CIRCUIT

THE HONORABLE: Donald B. Hocker.

PRESIDED.

NOTICE OF APPEAL IS NOW SERVED

Russell L. DAVID sr. ..... Applicant,

V.

State of South CAROLina ..... Respondent.

CASE NO: 2014-CP-30-0342

This Appeal come Before this Court BY WAY OF AN Application FOR Post-Conviction Relief FILED ON MAY 1, 2014. the State Filed it's RETURN AND AMOTION FOR summARILY DISSAL ON September 5, 2014. To HONORABLE Judge Frank Addy, JR. NOW This MOTION go's to The HONORABLE Judge Donald B. Hocker to preside's over the case.

Appellant ARGUES if Strickand V. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.E. 2d 674. PROVIDE'S PRO SE FRAMEWORK FOR ELEVATING A CLAIM that COUNSEL was CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO FILE A NOTICE OF DIRECT Appeal. Appellant "DID NOT KnowingLY OR IntelligentLY WAIVE His Right to A DIRECT APPEAL" AS IN LockETT V. STATE, 409 S.E. 2d 391 (S.C. 1991). WHEN Appellant ASKed Counsel's FOR What To do NEX IN 1997. The BASE(S)

IN OF Appellant Issues. The Two TRIAL Counsel's IN The **MURDER TRIAL** WAS INEFFECTIVE FOR FAILING TO **OBJECT** To The **IMPROPER** CONVICTION OF The Court, WHEN THE Judge Convicted and Sentence Mr. David sr. on the **Murder Charge.** (it Would OR is A little Short of Judical **Murder**, it can Not Boulsted and Would be a Gross VIOLATION of the State AND The DUE-PROCESS of law and The CONSTitution of The state and United States. At The Time Appellant Was Accused and Sentence to The Murder Charge We OR [I] OR this Court would Venture To Think that no Appellant Court in a State OR federal Court Would Hesitate [redacted] SO to decide. (see) **Johnson V. State**, 480 S.E.2d 733 (S.C.) 1997. and in **State V. Baccus**, 362 S.C. 41, 48, 625 S.E.2d 829 (2001).

[AN Abuse OF DISCRETION OCCURED when the TRIAL Court's Ruling is based ON an ERROR OF LAW] or When "GROUNDED [redacted] IN FACTUAL CONLUSION. **State V. Jennings**, 394 S.C. 473, 477-78 S.E.2d 91-93 (2011). IN determining Whether The Lenght of time FOR a Post Conviction Relief Application is Reasonable, FOR Appropriate Constitutional INQUIRRY is Whether the Detention lasted longer then was NECESSARY Given Mr. David sr. Circumstances ant it's PURPOSE That Appelant was not Allowed **His** FAIR OPPORTunity Required by The Contitution of the State of South CaROlina That He was Allowed, **"A INEFFECTIVE NOT ONE But TWO Counsel's At TRIAL.** AND Mr. David sr. ARGUES That In

STATE V. Allen, 261 S.C. 448, 200 S.E. 2d 684 (1974). The defendant Pleaded guilty to the Charge and on appeal, he argued That he [should] be permitted to withdraw his guilty plea because, interalia. the trial court Judge erred, as a matter of law, Now Ascertaining Whether there was a factual basis Sufficient to Support the Charge. Mr. David sr. asked this court if a defendant did not Plea to the Charge of Murder. IN Allen South Carolina Supreme Court in answer to The defendant's Contention Concluded: "There is no merit in this position, Where a defendant Voluntarily, intelligently, or understandingly enters a plea of Guilty. This makes it unnecessary for The State to offer eVidence to prove the offense charged in the warrant or Indictment. 261 S.C. at 451, 200 S.E. at 685-86." Unfortunately, The State Court holding Apparently ignored one of the basic purposes underlying Ascertained. of a factual basis, and The constitutional Mandate of North Carolina V. Alfred, 400 U.S. 25 (1970). That Such a basis be ascertained. As important to The Requirement as the Purpose of insuring, That a plea be Knowing and Voluntary and intelligent is The Collateral goal of Protecting The innocent, Id at 38 n.10. This is no more Than to Say That a [Judge] is Responsible for The proper administration of Justice. Which includes His on ERROR's and insuring That The Innocent People do not go to Jail. Several Recurring guilty Plea Situations point to The need for Requiring Ascertainment of Strong Factual basis. For instance, it Is now Clear That a plea of guilty need not be an admission of

Guilty in Order to be accepted When Such pleas accompanied be protestations of innocence of one of the Charges Clearly was told that the defendant was not guilty of Murder in open Court. It becomes incumbent open The Trial Judge or A P.C.R. Court to determine That The defendant has intelligently [concleded] that his interest Require entry of a guilty plea to the Whole Charge and Not Just part, or have the Judge exercise That Charge for a Later Trial, or [That] the Record... Contain Strong evidence of Actual guilt. (emphasis) added).

The South Carolina Supreme Court seems To ingnore the possibilty that a plea need non necessarily be an admission of guilty... In Allen, the court Stated that a "Plea of guilty is an admission or Confession of guilt... it admits all matters of Fact averment of the accusation." 261 S.C. at 461. 200 S.E.2d at 685.

Other obvious Situations in Which factual basis Should be ascertained occur when a defendant can not be Recall The Transaction for which he is Charged and when he plead guilty To (See) A.B.A. project on Minimum Standard for Criminal Justice, Standards Relating to Guilty Pleas 1.6 and Commentary (approve Draft 1968.) Moreover, it is well settled that a Judge, in the Absence of law to the contrary and When justice may so Require is empowered to Refuse to accept a guilty plea. (See) Lynch v. overholser, 369 U.S. 705, 719 (1962). in Fact, it would of The defendant case, [the] Should be where There is a Serious question as to The Viability of The

Case he Should be under Compulsion to exercise that power. The South Carolina Rule Adopted in **Allen**, Rether Than prometing Justice, Seemingly enhances the likelihood, that the increasing the possiblity of "**unjust incarceration**". Forttunately The Rule Seem's destined to an **EARLY DEATH** at [redacted] least one Federal Appellate Court has interpreted. **ALFORD** as STANding The PROposition that ASCERTAINMENT OFA factual basis is a Constitutional [that] PREREQUISITS to the proper Acceptance of a guilty plea. united States ex Rel. **DUNN V. CASSACLES**, 494 F.2d 397, 399-400 (2d cir. 1974.) The Possibillty exist That Allen may be Read not to preclude The Requirement of Ascertaining A factual basis but only to Preclude the Requirement; That the State must always offer Evidence to Prove the offense Charged As in DAVID sr. Case. A markedly different Situation arises, **HOWEVER**, WHEN AN ~~ATTORNEY~~ [redacted] **Abandons His Cliend** Thereby Occasions the default in such Cases The principal Agent Relationship is Severed and the Attorny's act's or omissions "cannot" Faulted For Failing to act on his own behalf When he laks Reason to belive his Attorney's of Record, in Fact, are not Representing Him. IN A... Habeas Corpus. Key-403.1A Clain exists Where Something external to the Petitutioner Something that [redacted] Cannot Fairly beattributed To him, Impeded His efforts to Comply With The State PROCEDURAL Rule.

MR. DAVID SR. Now Question this Court: To Review This Case in like of **WHITE v. State**, 263 S.C. 110, 208 S.E. 2d 35 (1974). When looking at This Applea

WHITE V. STATE
AND
State of South Carolina
V.
Russell Leon DAVID
1997-GS-30-0183

THE ATTORNEY'S CHIP HOWE, ESQ AND JOHN R FERGUSON OF COX & FERGUSON attorney's at LAW. FOR MR. DAVID SR.

Mr. DAVID SR. Argues as in **White v. State**, one of The ANEMALIES OF THE Right to AN Appeal Mandated, it read's as: A Review by an Appellate Court of "**Final Judgment**" in a Criminal Case... is not now a necessary element of due process of law. **Mc. Kane V. Dueston.** 153 U.S. 684, 687 (1894). see also **Griffin v. ILLINEIS**, 351 U.S. 12, 18 (1956). South Carolina, as all other Jurisdictions in the united States, [**NOTE**] FAILURE TO Timely **Notice of Appeal** in A CRiminal Cases; EXCUSABLE Neglect, (see) **Noter DAME LAWER 73,78** (1965) [HERE IN AFTER CITED AS Noter Dame Lawer.] HAS provided Criminal defendant's with the means to Appeal There Convictions and Sentences. the South Carolina Statute S.C. Code ANN § **7-401** (1962): AN Appeal May be Taken to The Supreme Court in the cases mentioned in §§ **15-122** and **15-123**. "Granting The Right to an Appeal is Limited by a NOTICE PROVISION. **S.C. Code ANN § 7-405** (1962) Provides in Pertinent part; in every Appeal to The Supreme Court From AN **ORdeR Decree or Judgment** Granted OR Rendered at Chambers From which an Appeal may be Taken To The Supreme Court, The Appellant OR His ATTORNEY'S

Shall, within (10) day's after Receiving Written Notice that The ORDER has been Granted or Rendered. Given "Mr. R. DAVID sr. Did not Know of this Statute. "NOTICE" To THE OPPOSITE Party's or His TWO TRIAL Attorey's of His INTENTION to Appeal: so Mr. R. DAUID SR. Attorey's are so INEFFECTIVE WHEN THAY **ABAMON** Ther Client without **"NOTICE"** so How was Mr. DAVID sr. To Know He Needed To Give Like **NOTICE** of His intention to Appeal. "The Cause and Prejudice Requirement Shows Due-Regard For State's Finalit and Comity intersts while ensuring that **"Fundamental Faireass"** [Remains] The central Councern of the Appeal for The defendant in his Right's to A Habeas Corpus Review. **DRETKE V. HALEY**, 541 U.S. 386, 124 S.ct. 1847, 158 L.Ed.2d 659. The Unusual CIRCUMSTANCES of this case, Agency Law priciples and Fundamental Faireass Peit to the Same Conclusion; There was Indeed cause to **"EXCUSE"** FOR Mr. R. David sr **PROCEDURAL DEFULT**. "THROUGH NO" Fault of His ON. He Lacked The Assistance of Any **Authorized Attorny's** during the (18) [redacted] EIghteen Year's and He had no Reason to Suspect That in [Reality] He Had Been [Reduced] to Pro Se STARUS.

IN **WHITE**, The Deffendant was held to have Waived His Right to Appeal in Spite of The Fact That He may Have Been UNAWARE Both of that Right and of The Means By Which it may have been Asserted. IN: **Nelson V. Pelton**, 415 F.2d 1154 (1969). and **Hamon V. Maschner** 981 F.2d 1142 (10th Cir. 1992) (lost Right To File direct Appeal due To Attorney's Action's.

The Fourth Circuit Provided a Conduit by Which the harshness of such a Result was to be avoided as in Mr. David sr. Case and by Failing to Follow the **Nelson** Rule, The South Carolina Supreme Court May have Obviated The need in **White** Type Situations. The Trial error's in Mr. David sr. Case deprived The Opportunity to present A defense on The Murder Issues. For Criminals To Apply For Federal Habeas Relief He Must First Exhaust all Opportunitys in The State of Which the error's hamper his deprived opportunity to present his defense OF The Constitutional Right. The Requirement that notice of INTention to Appeal must be Must be Given Within a Statuterily Prescribed time is Founded upon "The Practical and...Inpertant Interest in Securing a termination of the Litigation" see **Notre Dame Lawer, Supra Note 88. at 73 n3.** Citing Butor, Finality in Criminal Law and Federal Habeas corpus for State prisoners, **76 Harv. L. Rev. 441** (1963). and upon The Fact That [L]engthy Delay Which Hamper an Adequate Review Also eRode The effidcacy and the destred Goals of OUR CRiminal Administration. (see) NOTRE DAME LAWER, SUPRA NOTE 88. at 73 N.4 Citing; **HUFF V. UNITED STATES**, 192 F.2d [911.913-14] 1951. cert. Denied 342 **U.S.** 946 (1952) Proponents of FLEXIBILITY in The **NOTICE** Requirement Maintain That [Rigid] ENFORCMENT Does not Reflect "Society's Reluc-TANCE to Allow the liberTY or the life of The "**ACCUSED**" (emphasis added)

Tobe Determined in A Single, Fallible Proceeding (see) Notre Dame Lawer, Supra. Note 88, at 73 NOR its Hesitance to IMPOSE the severe punishment of imprisonment OR DEATH until [it] is Reasonably Certain that the Conviction is Not ERRONEOUS. ID. IN United States v. Robinson, 361 U.S. 220 (1960). The U.S. Supreme Court Recognized The Weighty Policy Arguments on Bothsides of the Issue But, Nonetheless, Concluded That [That] Policy Question INVOLING, [redacted] as it does many weighty and Conflicting Considerations, must be Resoled. ID. at 229 (emphasis added) IN Robinson, Defense Counsel's Failed to File A Notice of APPEAL within The time Period as Required by Federal Rules of Criminal Procedre 37 (a),(2) and 45(d).

Because Mr. David sr. was under the mistaken IMPression That Counsel's would Appeal FOR him as in Robinson, Case The Defendant "would have Appealed his OWN. 361 U.S. at 221 N.1. The District Court GRanted the Defendant Leave To Appeal.

Finding that the NON Copliance was Due to Excusable Neglect, and the Court of APPEALS. "AFFIRMED". IN REVERSING...

Mr. DAVID sr. The Defendant "AFTER" His TRIAL AND CONVICTION OF MURDER was over in a South Carolina COURT OF LAW was Led From the COURTroom [NEVER] to see OR Converese With His two TRIAL COUNSEL's Again FOR Year's "NOT ONCE" Prior to His tRIAL OR AFTER His TRIAL Had He been INFORMed of his Right's to Appeal; Consequently, he Failed to meet the Mandatory Notice [Requirement] OF [redacted] South Carolina Law and was "Denied" an APPeal. Just as in the **Nelson** Case. Mr. DAVID sr. Maintaining that He was UNAWRE of his Rights To Appeal At All Time's Prior to The Final Date. The Defendant stated that He Had Eicussed his Appeal in A Letter to His Attorey's "Dated" February 12, 1997. (SAying I WAS UNAble to Understand What You are Saying About The Appeal), so He Asked [Chip Howe] The Other Attorey ON my Case if He know He Also Saying he does not know What I Want. (see) letter in Appendix (A). Mr. David sr. also called his Attorney and asked about a Appeal in (1997) This was to Mr. Ferguson also this was about What He Needed To do About the Conviction to The Murder. The "**Sole**" Question This Court has up FOR Review is Whether Counsel's [redacted] Representation was within The Range and Scope of Competence demanded by **Strickland** and its Progeny. The defens deprived Mr. David sr. The defendant of a Fair TRIAL ON The Murder That He didnot Pled to ON The 14Th day of March 1997.

Counsel's performance was deficient it Fell below an Objective Standard of Reasonableness, and That Counsel's "ERROR" Was Prejudicial, meaning that There is a Reasonable Probability that, but For Counsel's Unprofessional ERRORS, "THE Result of The proceeding Would have been different". A error of The Court and his two Counsel's on the extraordinary Facts of Mr. DAVID sr. Maintains that "For the Lawer's Default He believed to Doned his Appeal on this "Issue" is A EXCUSE For The Default. EVERY STAGE of a Criminal Perceeding Where Subsrantial Right of a Criminal Accused may be Affected (emphasis added). understand what He is Saying about the Appeal There is Cases to EXCUSE The The default on this ISSUE. Thus, Gideon V. Wainwright, 372 U.S. 335, 83 S.ct. 792 L.Ed.2d (1963). Establishes The Basic Rights to Counsel. [Appointment of Counsel For Indicent defendant's is Required] at every stage of a Criminal Perceeding Where Subsrantial Right of a Criminal Accused may be Affected. Mempa V. Rhay, 389 U.S. 128, 134, 88 S.ct. 254, 257, 19 L.Ed. 2d 336 (1967). (emphasis added). such Cases as Escohedo V. Illinois, 378 U.S. 478, 84 S.ct. 1758, 12 L.Ed. 2d 977 (1964). Miranda V. ARIZONA, 384 U.S. 436, 86 S.ct. 1602, 16 L.Ed. 2d 694 (1966). United States V. Wade, 388 U.S. 318, 87 S.ct. 1926, 18 L.Ed.2d 1149 (1967). and Gilbert V. Califonia, 388 U.S. 263, 87 S.ct. 1951, 18 L.Ed. 2d 1178 (1967).

MARK's The Begining point at Which The Right to Consel Come's into being ONce The Right has Matured. The Law is Now Certain That it Continuse Thurogh the Conclusion of Appellate Review. Douhlas v. Cal. 372 US 353 (1963). Swenson v. Bosler, 386 U.S. 258.87 (1967). and "Where The Assistance of Counsel Is a [Constitutional Request, The Right to be Furnished Counsel]. Carnley v. Cochran, 369 U.S. 506, 513, 82 S.ct. 884-89, 8 L.Ed 2d 70 (1962).] Puckett v. North Carolina, 343 F.2d 452 (4TH cir. 1965). EVEN IF Counsel Appointed To Conduct an Appeal, Concludes that the Appeal is Feivolous and Desires to withdarw "He must" Never the less, "Brief Any Leagal Points Arguable" on the Support the Appeal, and if The court Finds any Legal Point [redacted] ARgable ON it's Merits, it must Prior to Decision Peovide ANother Attorney. ANders v. Cal. 386 U.S. 1396.18 (1967). IN Deciding in an instance, [redacted] That The Right To The Effctive Assistance of Counsel is Deinde in an Instance, as in Nelson. Where a defendant was not AWARE, and Had not Been INFORMed of His Rights To Appeal. That court offered the Following Persuaive AN ALYSIS; [where A Defendant was not AWARE, AND Had Not been INFORMed of The Breadth and Scope of The Right to Counsel as Established by These Cases IS Considered "I OR We" Think IT Follows That An Indigent Defendant is entited to have "Counsel" After

His Trial Has Been Concluded For at Lease As long as it is Necessary for Counsel's to Advise Him of His Right to Appeal or ask Him if would like to at leas Appeal the Murder Conviction and Sentenc The Manner And Time For or in Which to Appeal and whether and Appeal has any Hope of Scess. Unles Counsel has provided Advice as to The Right to Appeal and The manner and time in Which to Appeal prior To The Conclusion of Trial or Unles The Trial Court has Aduised Him in the Latter Regard and Shiulderd The Burden Which is Otherwise that of Counsel. Where Counsel, "AS IN THE INSTANT" case Treat Their Represen-Tation as Terminted Without having Imparted Such Advic A defendant's Right to Counsel has not Treated Their Representation as terminated But Fail impart Such Advic A defendant's Right to EFFective Assistance of Counsel Has been Denied AS IN Mr. DAVIdsr. Case The 6Th Sixth Amendment Right as Made Applicable to the State by the 14Th Fourteenth Amendment. Has been VIOLTED Id. at 1157-58 [Foot-Notes Omitted]. Defendant was not Apprised of The Right and Where as Mr. Davidsr. may Stand For The Proposition that a defendant may Waive, Theough his own Neoligence, A Right of Which he is Aware The Fourth 4Th Circuit IN Nelson Reasoned Logically That such A "Right" Could not have been Waived When IN FACT, It was Unknow. IN WHITE, The South Carolina Supreme

Court "Found it was unknow incredible that, in view of his past Criminal Record the Defendant was unaware of his Right to an Appeal". Mr. David sr. Has been To The Court Room (4) Time's and has Never done a Appeal. He must Also be Informed of The Procedure For Asserting that Right 415 F.2d 1157-58. The Supreme Court Has Defined "Waiver" To be Intentional Concession of a known Right or Privlege. (see) Johnson v. Zerbst, 304 U.S. 458, 464 (1939). "Finally" The Precedential Value To be Accorded to ROBINSON as a Basis For Overruling NELSON Becomes much Less Substantial When one Considers the Fact That The Issues Upon Which The Latter was Decided The Right to Counsel Played no Part in the Supreme Court Decision.

In White v. State, The Defendant Sought [State Post-Conviction Relief] Alleging Inter Alia, That He Had "Been Denied The Effective Assistance" of Counsel Because of Trial Counsel's Failure to inform him of his Right to Appeal..

Mr. David sr. Record will Show in his TRIAL TRANSCRIPT NO: 1997-GS.-30-0183... Specifically He Asked The First (P.C.R.) Judge to Grant him a Direct Appeal and Cited Nelson and Shiflett v. Commonwealth of Virginia, 447 F.2d 50 (4th cir. 1971). In SHIFLETT, The Court Considered The Retroactive Applicbility of Nelson, And Decided That "The Standards Prevaling before Nelson

WAS ANNONCED would be Applied in All Cases in which the time FOR instituting an Appeal Has expired ON OR Before [June 25, 1969] at 57-58. As Authority For granting his Request. AFTER Finding the Defendant's Other ASSERTIONS of "ERROR" to be Without Merit, the HEARING Judge Ruled, HOWEVER, that the defendant had not Waived his Right to Appeal by Not Filing timely Notice and Directed his Counsel to Petitution the South Carolina SUPREME Court For a Direct Appeal. IN Consideration OF The defendant's Appeal From This (P.C.R.) ORDER to Grant an Appeal Absent Compliance with [section 7-405 see Note 89 supra.] OF the South Carolina Code of Law and that "IN the Absentce of any Showing OF "PreJudice" to The defendant a hearing Judge had "NO" Authority Not To Grant a New Trial When a Defendant had not had A direct Appeal [NOTED] That The Holding in White, may easily be limited to its Peculiar Circumstances. In Issuing [ISSUE] in a denial of Counsel ConteXT.

Look At Mr. DAVID sr. [Complete Record]. As A Result The Failure To Properly Phrase the Issue so That **Nelson**, Would Apply [would Leave section 7-405 as The Only Basis]. In Such a light the Supreme Court's That it Had No Jurisdiction to Entertain the Appeal may by Justifiable on Appeal of a P.C.R. "**ORDER**" However, Mr DAVID sr. was Deprived of Such An Opportunity to Peoperly Frame The Issue For the Court. Because "Jurisdiction of The Federal Court on Habeas Corpus is not Affected by Procedal Defauls Incured by the Applicant during the South Court Proceding" The Defendant Should Still be able to Avail Himself of His Federal Remdant (see) **FAY V. NOIA**, 372 U.S. 391, 438 (1963). Seemigly opens the Gates to a Potential Flood of Federal Habeas Corps Petitutions. Although The South Carolina Supreme Court is not bound to Follow The Fourth Circuit 4th Cir. Decisions, That Court's inclination to **ORDER** The State to provide Appeal's Because They were "not Aware of Their Right's has Clearly Been Expressed "Directly". In **Nelson**, and **Shiflett**, Moreover to Condition the Right to A New Trial or an Appeal upon A Showing of prejulice Directly Contravenes the Language of Those cases. IN **Nelson**, The Fourth Circuit 4th Cir. Observed; The Right To Counsel and Effective Assistance of Counsel is To Basic a Right to Coudition Entitlement there to upon an UNINFarmed Unitelligent-Indigent Applicant Showing That his Appeal Would Have at Least **DEATABLE MERIT** When the ability to make and preserve a Record was not

EVEN Within His Grasp. 415 F.2d at 1159 In Concluding it's Analysis, The Court Reasoned once Denied... The Burden of Proving [The Right to AN Appeal] Valueless in a Given Case must Rest upon The State which denied the Right by the [OMissions] of Counsel which it suppled if Indeed, The Law will Countenance Such a defense. Id. With [emphasis added] IN SHIFLETT, The Fourth Circuit 4th Cir. Seemed to Conclude That the [redacted] LAE would Not Permit the Defense By Staring That The Decision to Exercise or For go a [GUARANteed Right] is For the "Defendant" alone to make... and he must be provided Full InFormation Choice... Although Need have no Good or Rational Reason For his decison 447 F.2d at 53-54 (citations omitted) [emphasis Added] as a Result.

"IN CONclusion" ONE FINAL Point Should be noted in South Carolina, as in most other Jusisdiction's the Post-Conviction Relief PROCEDURE ACt is not to be Considered an Adequate Substitute For a Direct APPEAL. (see) the Uniform Post-Conviction Procedure ACt. S.C. Code ANN § 17-601 (b)(Cum. Supp. 1973). Which provides IN Part: (b). This Remedy is not a Substitue For Nor does it affect ANY Remedy incident... of "Direct Review of the Sentence or Conviction." (see) also State v. Taylor, 255 S.C. 268, 178 S.E. 2d 244 (1970). accord, Shiflett v. Commonwealth of Virginia, 447 F. 2d At 61. (Winter. J. dissenting). Thus, although the South carolina uniform Post-Conviction Procedure ACt. S.C. Code Ann § 17-601-12 (cum. supp. 1973). is very broad, a defendant loss certain entitlements under it, which he Would be afforded on appeal. He Not entither to Counsel nor transcript Proir to AppROVal of a hearing on his Application For P.C.R..

(see) **Wood V. State**, 257 S.C. 179, 184 S.E. 2d 802 (1971). since a defendant is not entiled to Counsel until his Application is accepted, it follows that he would not be entitled to a Transcript as in Mr. David sr. has done his to P.C.R. without Counsel's help or a Trial Transcript. (see) **Johnson V. AVERY**, 393 U.S. 483 (1969); The last Sentence to §17-601 (a) (6) of the Act provides that "This section shall not be Construed to permit Collateral attack on the ground that the Evidence was insufficient to support a Conviction." Mr. David sr. is not Challenging the Evidence he is challenging his Two Trial Counsel's who was so ineffective it denied Mr. DAVID sr. A Fair Trial on the Murder he Never Pled to in open Court on March The 26 of 1997. Mr. David sr. Knows he not permitted oral argument on appeal of the **P.C.R. ORDER**. (see) SC. supp. ct. R 29.

IN some instances, therefore, The Collateral Remedies afforded under the Act may not suffice to allow the State to assert That The defendant Has Not been "prejudiced" by the Failure of The State. The Circuits are split as to what Standard of Review to apply When considering [redacted] denials of Motions to Dismiss on the grounds of Selective or Vindictive Prosecution. To a defendant's Choice to exercise his protected legal Right's can Constitute equal protection Violations. The Due Process Clause prohibits a prosecutor From using Criminal Charges in an attempt to Penalize a defendant's Valid exercise of Constitutional or Statutory Right's. ("To Punish a person because he has done What the LAw Plainly allows him to do is a due process Violation of the most basic Sort.") (see) **U.S. V. Sanders**, 211 F.3d 711, 716 (2d cir. 2000). **U.S. V. Esposito**, 968 F.2d 300-303 (3d cir. 1992) (Same)

U.S. v. Wilson, 262 F.3d 305, 314 (4th Cir. 2001). (same) (The due Process Violations arise if Prosecutor seeks to punish defendant For exercising legal Rights). (see also) U.S. v. Pittman, 642 F.3d 583-86 (7th Cir. 2011). (vindictive prosecution Claim arises if Prosecution "pursued in Retaliation" For defendant's exercise of a legal Right); (see) Mr. DAVID sr. Application FOR P.C.R. and State's Return and Motion to Dismiss 2014-CP-30-0342 and **2013-CP-30-0243**. The **Honorable Costa M. Pleicones** who Sentenced Mr. DAVID sr. was a **Supreme court Member of The board of Supreme court Justice** of South Carolina at The time of Mr. David sr. P.C.R. was seeking Review so The prosecutor had [redacted] a ReasonAble likelihood of Vindictiveness so The prosecutor had not brought the case OR his selective prosecution and vindictiveness to trial For a Post-Conviction Relief hearing on The Issues (see) Newly discovered evidence of Justice of Supreme Court of south Carolina Honorable Costa M. Pleicones. The Prosecutor did NOT Ask J. Pleicones to Recusal himself this Prejudice Mr. David sr. in his First **P.C.R. NO: 2013-CP-30-0243** AND The Prosecutor is doing the Same With NO; 2014-CP-30-0342 Application. these are Not New grounds For Relief Mr. David sr. Has Argud in a New Way in these Issues of trial Counsel's ineffectiveness these have not been Reviewed in a P.C.R. Court **Judge Hocker**, Dismissed The P.C.R. without a hereing. Just like the First ONE Judge Griffth in NO: **2013-CP-30-0243**.

IN **DAVID V. STATE**, 342 S.E.2d 858 (S.C. 1995) (pre. curiam). Six 6 step's procedure was adopted to be Applied when it is Found that defendent did not Knowingly and subsequently seeks Review of issues which arose at trial and in **Luckett V. State**, 462 S.E. 2d 858 (S.C. 1995). Petitioner "did not Knowingly and intellently Waive his Right to Direct Appeal id. 858 court Reveiewed direct Appeal issues and affirmed Finally, a Successive Application may be Permitted" Where the court Refusal to hear the Claim would constitute a Gross Miscarriage of Justice **AICE** 409 S.E.2d 399. Thus, if a P.C.R. Applicant Requested and was denied an opportunity To Seek Appellate Review From a P.C.R. denial, or if The Right to Appeal was not Knowingly and intellently Waived, AN Applicant can petitation FOR Certiorari to The South Carolina Supreme Court for New Appeal. Id. offectuate an Applicants right to Appeal a P.C.R. dismissal the Supreme Court Requires P.C.R. Judges to Advise pro se applicants of both Theie right to Appeal and also theie Right's to Appellate Counsel When their P.C.R. Application are Summarily Dismissed **ODOM V. STATE**, 523 E.2d 753, 756 (S.C. 1999).

There is ONE last Caveat to Add To This Discussion General "(1) ONE-Year" Period does NOT Apply WHERE a defendant is denied Direct Appeal Due to ineffective Assistance of Counsel. **ODOM V. STATE**, This is not so much an Exception to The Statute of Limitations. But Rather a Special Situation in Which the Statute of Limitation's "**does Not apply**".

IN Wilson v. State, 559 S.E. 2d 581 (S.C. 2002). Wilson was Tried and Convicted of Armed Robbery and Sentenced to 30 Thirty year's Confinment in The S.C.D.C. on October 18, 1995. Wilson Id. at 582 did not have a Direct AppEAL REVIEW., Just as Mr. DAVID sr. did Not have one IN 1997 Just as Wilson. Clamed he Instructed his Trial Attoney's to Appeal his Conviction, but The Attorney Failed to do so. IN Wilson he Filed an Application FOR Post Conviction Relief Alleging his Trial Attorney's was INEffective in Seveal Respects, The Lower Court Dismissed Wilson Petitution Just As They Dismissed Mr. DAVID sr. as UNTimely. "But" IN Wilson, APPEAL The South Carolina Supreme Court Reversed. Holding The Statute of Limtitations [redacted] "Does Not" Apply [redacted] WHEN AN Applicant Alleges he Did Not Knowing and Intelligently WAIVE his Right to a Direct Appeal From His Criminal Conviction. Id. at 582-83 The Court Explained: A defendant has A PROCEDURAL Right To ONE FAIR BITE AT THE APPLE. That every Defendant Has A Right to File a Direct Appeal, and a P.C.R., in this Case Applicant Mr. DAVID sr. has Not Received either a Direct Appeal or P.C.R. From His Conviction or a Hearing of All ISSUES. (See) Johnson v. State, 411 S.E.2d 223 (S.C. 1991). Trial Counsel was Found Ineffective FOR failing To Timely Notify Defendant of Right to Appeal so Direct Appeal ISSUE's were Reviewed on The Merits IN P.C.R. Appeal, "NO Right Rank's Higher

Than the Right of The Accused to a Fair trial. in The Context of The Guilty Plea The Petitutioner Has Showed There is a Reason that but For Counsels "ERRORS" He (Mr. Davids sr.) would haveGone all The Way with his Trial NOW That he Knows The Facts of his case Given the Defendant an Opportunity to Go to Trial "ON The Original Charge." All Applicants ARe Entitled to a full and Fair opportunity to present Claims in one P.C.R. Successive P.C.R. Applications are Permtted in Rare Procedural Circumstances. Code 1976 § 17-27-90 in ODOM v. STATE, 523 S.E.2d 753 (S.C. 1999). For P.C.R. From Conviction For Drug OFFenses.

Petitutioner Filed Second PROSe Application For P.C.R. and it was Summarily Dismissed he Appeal It and the Supreme Court (TOAL J.)

1.) Petitioner was Entitled To EvidentRiary Hearing on Issue of Whether he Knowingly "and" Intelligently Waived his Rights to Appellate Counsel After his First Application was Summarily Dismissed and 2.) one Year statute of Limitions Did not Apply To Petitioners Application From Summary Denial of P.C.R. Based on Denial of Right to Appeal as in Mr. David sr. Right To Appeal his Dismissed P.C.R. From: Judge Griffth Jr. in 2013.

LAW ANALYSIS

Under The Post-Conviction Relief (P.C.R.A.) Rules An Applicant Is Entitled to A full Ajudication on the Merits of The Origina Petition, or **ONE Bite at the Apple** this "**Bite**" Includes Applicant's Right to [redacted] Assistance of Counsel In that Appeal. **Rule's civ. Proc. Rule 71.1 (g).** The Supreme Court, **Toal. J. Held That;**

1). Petitioner was entitled to evdertiary Hearing on issue of Whether He knowingly and Intelligently **Waived** His Right to Appellate Counsel After His First Application was Summarily Dismissed. and

2). (One) The Statute of Limitation's didnot Apply to Petitioner Appeal From Summary Denial of Application For (P.C.R.) Based on denial of Right to Appeal.

(**Two**) This was because only **MINUTE'S PRIOR** to my plea Not Guilty, to Guilty "**I TOLD**" The TRIAL Judge. and My two Trial Counsel's and The Court Room With The Jurors in the Box That **I was Not Guilty of the Murder.** In **Austin v. State**, 305 S.C. 453, 409 S.E.2d 395 (1991). Under The Post-Conviction Relief Rule, An Applicant is Entited to A Full Adjudication on the Merits of The Original Petition, or "**ONE Bite**" at the "**Apple**". **Alce v. State**, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991). "[redacted] This "**Bite**" Includes An Application's Right to Appeal the Denial of A P.C.R. Application, and the Assistance of Counsel in That Appeal. (see) **Alce**, 305 S.C. at 448, 409 S.E.2d 392. and (see) S.C. Code Ann § 17-27-90 (1976) & Supp. 1997). In Order To Be Entitled to A Successive P.C.R. Application, The

Applicant must Establish That the Grounds Raised in The Subequent Application Could not have been Raised In the previous Application.
Tilley v. State, 334 S.C. 24, 511 S.E.2d 689 (1999).
Additionally. Circunstances in Successive P.C.R. a Application are peimitted in Rare Procedural Circunstances (see) e.g. Case v. State, 277 S.C. 474, 289 S.E.2d 413 (1982). (Allowing a Successive P.C.R. Application Where The Applicant's First P.C.R. was dismissed Without Assistance of Legal Counsel and (Without a hearing) Analysis of "Protections" Available to Capital Defendants is Proving Elements Beyon A Reasonable Doubt under The Due Process [redacted] Clause of the 5th Fifth Amendment. and The Torrence, Concurrence Found That Strict Adherence to a Contemporaneous [Objection Rule] Does Not Threaten a defendant's Right to a Fair, Constitions Trial Because Defendant Enjoy a Number of other Protections (see) Id. at 62-64, 406 S.E.2d at 324-25 (Toal. J.. Concurring).

Acrding to The Concurrence The Protections Include:

1). The AVAILABILITY of State Post-Conviction Relef Proceedings; (see) id. at 62-64-406 S.E.2d at 324-25 (J. Toal Concurring).

2). The AVAILABILITY of Federal Habeas Corpeas Relief; (see) id. at 64-406 S.E.2d at 325-26 (Toal J. concurring).

3). The Statutory Right (see) S.C. Code Ann § 16-3-25 (Law. co-op. 1976). To a proportionality Review of a

Capital Defendant's Sentence; (see) **Torrence**, 305 S.E. 2d at 64-406 S.E.2d at 326 (Toal, J. concurring).

4). The Fact That The Death penalty may be Imposed ONly After at Least ONE Statuory Aggravating Factor Has been Found to Exist beYond a Reasonable Doubt: Under The Due Process Clause of The Fifth Amendment, The Prosecution is Required to Prove beyond a Reasonable Doubt every element of the Crime With Which Mr. DAVIDsr. Was Charged with back in 1995. The Government's Failure to Meet it's burden of proof When Mr. DAVIDsr. Told The Court He didnot WANT TO Pled to The Murder Charge the Government Should had Stoped the Trial and upheld The Rights of Mr. DAVIDsr. to Show That his ATTORNEY'S Would have pursue The Murder Charge,.. and (see) id.

5). The AVAILABILITY of State Habeas Relief asa Last ResoRT. (see) id. at 69, 406 S.E.2d at 328 (Toal, J. concurring).

Citing these Protections, Justice TOAL Concluded That "[T]He Conviction of AN INNOCENT Person is unlikely. under our Modern SYSTEM. The Supreme Court has inentified Narrow Categories in Which is presumed

1). When There Has been A "[A]ctual or Constructive Denial of The assistance of Counsel altogether

2). When There are "**Vacious**" Kinds of State Interference with Counsel's assistance; or Pro se (see) **Strickland**, 466 U.S. at 692; (see) also

Mickens V. Taylor, 535 U.S. 162, 166 (2002). (prejudice presumed when assistance of Counsel "denied entirely or During a Critical Stage of The proceeding" (see) at 64, 406 S.E. 2d at 326 (TOAL, J. concurring). AS IN STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984) COUNSEL'S PERFORMANCE Falls below Strickland's, Objective Standrd of Reasonableness" ONLY IN Those RaRe Instances When The perFoRmance is outside That "Wide Range of Reasonable of Professional assistance Mr. David sr. has Establishes [PREJUDICE] unDER Strickland. by Demonstrating" That There is Reasonable Probability That, But For Counsel's [unprofessional ERRORS] The Result of The Proceeding Would have Been differenr.

[A] Reasonable Probability is a probability [redacted] sufficient to Undermine Confidence in the outcome of The Proceeding.

However, due to CONCERNS about FUNDAMENTAL FAIRNESS The Court also MAY Examine Whether Counsel's ineffective assistance Deprive [d] The defendant of a Substantive OR Procedural Right "to Which The LAW ENTITLES HIM"[1] Supreme Court Stated That "There [ARE]... Situations in Which it Would be unjust To Characterize The likelihood of A different outcome As legitimate Prejudile ONLY in Cases Where The DefendANT is DeprionAL ANALYSIS INTO FUNDAMENTAL FAIRNESS.

1 WILLIAMS V. TAYLOR, 529 U.S. 391, 392-93 (2000).

CONCLUSION

A PRAYER FOR RELIEF;

WHEREFORE, Appellant Respectfully Pray's that This Appeal and this Court enter's the Judgment;

1). GRANTING Appellant:

A declaration that the act's and OMISSIONS [described Herein] violate His Right's Under the Constitution and law's OF The UNITED STATES and The STATE of South Carolina and;

2). GRANTING Appellant Judgment AS;

Individual is entitled to Ruling's on the base's of an ERROR of LAW or, When grounded in factual conclusions, STATE V. Jenning's 397 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011). In determining Whether the length of time For A P.C.R. Application is Reasonable For apporpiate Constitutional inquiry is ReasonAble For apporpiate State Constitutional Rights is Whether the detention lasted longer than Was Necessary Given His CIRCUMSTANCES.

3). GRANTING;

Appellant Right to AN Appellate counsel Assistance in Seeking Revew of the denial of his P.C.R. in light of Rule 71.1 (g) and 71.1 (d).

4). GRANTING Appellant Right To His EQUAL PROTECTION CLAUSE AND DUE PROCESS OF LAW IN EVERY STEP IN THIS APPEAL;

5). GRANTING A HEARING;

ON THE ISSUES RAISED IN His P.C.R. Application.

b). To A Reversal and Remande for a Hearing;

Today's Review hearing in this Court provides a Mode For The Redeemable of **Denials** of due process of Law Vindication of due process of Law is precisely it's Historic. A Variant of this Argument is that if the State Court declines to ENTERTAIN because of A Procedure's Default IN THE Length of Time AND ON A THE MISCARRIAGE OF JUSTICE ON THE **MURDER. CHARGE** Default of Justice Then The Prisoner Castady is Actually Due to The Defanult and The Miscarriage of Justice Rether Than to The UNDRluing Constitutional INFRINGEMENT OF THE Murder Charge.

Mr. DAVID sr. Ask This Court To Look AT All of The Constitutional And Law of This State an this United States AND GRANT A EVIDENTIAEY HEARING.

Russell L David sr.

Russell Leon David sr.
PRO Se.